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PUBLICATIONS OF

The Arkansas Historical Association

Edited by
JOHN HUGH REYNOLDS
Secretary

Vol. 3

FAYETTEVILLE, ARKANSAS
1911

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PREFACE.

This volume was due to appear December, 1910. The delay is due to the failure of the general assembly of 1909 to make provision for printing it. The association hopes that hereafter the volumes will appear on time every two years. Since the appearance of the last volume the general assembly has provided for the permanent organization of the movement to preserve and publish the history of the State. The History Commission has been made permanent, and has been given a salaried secretary, with offices in the state capitol, and the publications of the Arkansas Historical Association have been made a charge on the general printing fund. These laws are fundamental, and, from a legal viewpoint, thoroughly establish the cause of preserving local history. The editor, in his capacity as secretary of the history commission, has been so busy in his efforts to bring about these results that he has not had time to arrange for programs and meetings of the historical association.

The editor is under obligations to Dr. C. G. Carroll of the University of Arkansas for assistance in reading the proof, recognition of which is hereby made.

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ADMINISTRATIVE REPORT.

BY J. H. REYNOLDS.

To His Excellency, the Governor of Arkansas, Little Rock:

The act creating a permanent history commission became a law May 31, 1909. In accordance with its provisions, Gov. George W. Donaghey, on June 15, 1909, appointed the following as the appointive members of said commission: Hon. James H. Berry of Bentonville, Dr. A. C. Millar of Little Rock, Hon. J. F. Mayes of Fort Smith, Hon. H. B. McKenzie of Prescott, Miss Clara B. Eno of Van Buren, and Prof. J. H. Reynolds of Fayetteville. In the absence of any provision in the law regarding a chairman, the governor authorized Professor Reynolds, secretary of the old commission, to call the new commission together the first time. Accordingly, Professor Reynolds on June 26 sent out a call for the initial meeting to be held at the Capital Hotel, at Little Rock, at 11:00 o'clock, July 5.

PROCEEDINGS OF THE FIRST MEETING OF THE COMMISSION.

At 11:00 o'clock on July 5, 1909, the commission met in one of the parlors (music room) on the second floor of the Capital Hotel. Present, A. C. Millar, H. B. McKenzie, J. F. Mayes, Mrs. John Barrow of Little Rock, proxy for Miss Clara B. Eno, and J. H. Reynolds. Absent, Chief Justice E. A. McCulloch, President J. J. Doyne and President John N. Tillman of the University, ex-officio members, and James H. Berry. Through Professor Reynolds, Justice McCulloch sent word that a session of the supreme court that morning would prevent his attendance until the afternoon, and President Tillman sent word that he was absent at Denver, attending the National Educational Association. James H. Berry stated that other engagements prevented his attendance.

H. B. McKenzie was elected temporary chairman. The members engaged in an informal discussion regarding the province of the commission, what work might be undertaken now, and how to raise money to meet expenses in view of the failure of the general assembly to appropriate for the work of the commission. At 12:00 o'clock the commission adjourned to meet again at 2:00 o'clock in the afternoon.

At the time appointed, the commission met in the banquet hall of the Capital Hotel. Present, McCulloch, Doyne, Millar, McKenzie, Mayes, Mrs. John Barrow, proxy for Miss Eno, and Reynolds.

After calling the commission to order, Mr. McKenzie, temporary chairman, stated what had been done at the morning session, and added that permanent organization was then in order. Thereupon Chief Justice E. A. McCulloch was unanimously elected permanent chairman. On motion of Dr. Millar, Professor Reynolds was elected temporary secretary.

On motion, a committee of three on rules was created, and the chair appointed A. C. Millar, J. J. Doyne and H. B. McKenzie to constitute said committee.

On motion of Commissioner Mayes, the appointive members of the commission proceeded to cast lots to determine the length of term of each in accordance with the provisions of the law. The result was as follows:

Miss Clara B. Eno.....	2 years
Hon. J. F. Mayes.....	4 years
Hon. J. H. Berry.....	6 years
Prof. J. H. Reynolds.....	8 years
Hon. H. B. McKenzie.....	10 years
Dr. A. C. Millar.....	12 years

Commissioner Reynolds introduced a set of resolutions, seconded by Mr. Mayes, outlining a plan of work for the commission. The secretary explained what work might be accomplished in the next two years with comparatively little expense. After some discussion, participated in by several members, the resolutions were adopted. They are as follows:

"Whereas, The last general assembly created the Arkansas History Commission, imposed heavy duties upon it, and provided for a salaried secretary as its executive agent;

"Whereas, The act creating the commission was passed so late in the session as to render an appropriation for its maintenance impossible;

"Whereas, For the commission to remain idle two years because of the lack of funds would mean serious loss to the cause of preserving our history;

"Therefore, be it *Resolved*:

"1. That the commission proceed to organize by electing a chairman and an unsalaried secretary and to carry out as far as possible the provisions of the act.

"2. That an executive committee, consisting of three members and the secretary, be created, whose duties shall be to raise by voluntary contributions sufficient funds to cover the necessary expenses of the commission incurred in carrying on the work, such as stamps, clerk's hire, and meetings of the commission; to direct the work of the secretary; to have general oversight of the work of the commission when the latter is not in session; to coöperate with the Arkansas Historical Association in editing the third volume of the publications of said association; and to prepare the biennial report of the commission to the governor.

"3. That a committee of three members on archeology be hereby created, with authority to have the secretary prepare an archeological map of the State, to make and promulgate rules governing the excavation of mounds and other archeological remains of the State and the collection of relics, and to secure options and terms of leases on lands on which are located important archeological remains. The committee shall make, from time to time, recommendations as to what archeological work the commission shall undertake.

"4. That a committee of three on rosters of Arkansas veterans in all wars in which our people have participated be created, whose duty it shall be to study the plans adopted by other states in preparing such rosters, to report their findings and recommendations to the executive committee to be included in the report of the commission to the governor two years hence, and to perform such other work as the means at the committee's command will permit.

"5. That the secretary of the commission hereby appointed is authorized to conduct all correspondence of the commission, to assist all committees in the performance of their work, to make judicious exchanges of Arkansas state publications for the publications of other states, commissions and societies, according to the provisions of the act.

"6. That the commission hereby express its hearty approval of the efforts of the Mississippi Valley Historical Association to collect, preserve and publish the general history of the Mississippi Valley, and we pledge our willingness to coöperate in every possible way with said association in its work."

The chair announced the following committee assignments provided for in the above resolutions:

EXECUTIVE COMMITTEE—A. C. Millar, E. A. McCulloch, H. B. McKenzie.

ARCHEOLOGY—J. H. Reynolds, John N. Tillman, J. F. Mayes.

ROSTER—J. H. Berry, Miss Clara B. Eno, J. J. Doyne.

Commissioner McKenzie nominated Professor Reynolds secretary without salary for the next two years. Motion was seconded by Mayes.

A lengthy discussion followed, in which the legal competency of Professor Reynolds to fill the place was considered. The law provided for a salaried secretary, directed that he reside at the state capital, and that he devote his entire time to the work of the commission. The duties of Professor Reynolds at the University would not permit him to meet these conditions. It was also pointed out that he was secretary of the Arkansas Historical Association, that the law required the secretary of the commission to coöperate with the secretary of the association in editing the publications of the Arkansas Historical Association, and that if the same person filled both positions there might be confusion. The commission, however, decided that as the work of the secretary for the next two years would have to be gratuitous, and as the expenses of the office would not come out of the state treasury, there could be no objection to a member of the commission filling the position. Whereupon Professor Reynolds was elected unanimously unsalaried secretary of the commission for the ensuing two years.

The executive committee and the secretary were directed to have the state printer execute the necessary stationery and circulars for the use of the commission.

On motion of Commissioner Mayes, the chairman was authorized to call the commission together at his pleasure.

On motion, the secretary was authorized to make exchanges with other states, commissions and societies for their publications, and in performing this duty he was authorized to make requisitions in the name of the commission on proper state officials for Arkansas publications to be used in effecting exchanges.

There being no further business, the commission adjourned.

WORK OF THE COMMISSION.

In the midst of his other duties, the secretary attempted to carry out the three main lines of work projected by the commission, namely: (1) The collection of data with which the

committee on roster might prepare its report and suggest the best plans to be adopted in the preparation of rosters of Arkansas troops; (2) The collection of the data necessary (a) in the preparation of an archeological map of the State, and (b) for the use of the committee on archeology in the formulation of plans and rules governing excavations and relic hunting, and for the preservation of mounds and other archeological remains, and (3) Coöperation with the Arkansas Historical Association in getting the manuscript for the third volume of its publications ready for the press.

BULLETINS.—Acting under the instructions of the executive committee, the secretary prepared the material for two bulletins and had them printed, and stationery for the use of the commission prepared. The work of the commission was delayed four or five months by the failure of the state printer to get out the bulletins on time. It was January 31, 1910, before the second bulletin reached the secretary. The first bulletin, known as Circular No. 4, contains the law under which the commission is acting. For a copy, see Appendix A. The second bulletin, Circular No. 5, sets forth the work proposed by the commission and makes an appeal for coöperation and contributions. For a copy, see Appendix B. As a channel of communication in reaching all parts of the State, the chairman appointed a representative of the commission in each county. For a list of said appointments, see Appendix C. Each representative was asked to keep the work of the commission before the people of his county, to furnish the secretary with information about the archeological remains of the county, and to solicit funds to cover the expense of the commission.

DIFFICULTIES.—The secretary conducted an extensive correspondence with representatives of the commission and with many others in the State, in an effort to secure facts about mounds, muster rolls and pay rolls. He also sent out over a thousand of circulars 4 and 5. But this work was seriously handicapped from the beginning. There were no funds. The contributions came in slowly. For a list of same, and of the expenditures of the commission, see Appendix D. Hence expenses had to be reduced to the minimum. In the second place, only few representatives of the commission took their duties

seriously. The fewest responses to appeals for information or money were received. For a list of rosters reported, see Appendix E. The lack of funds and the meager information received rendered the preparation of an archeological map of Arkansas impossible. This, however, is the only part of our plans that was not carried out.

REPORTS OF COMMITTEES.—Another line of work taken up was the collection of data for the use of the sub-committees on archeology and rosters. Letters were sent to other states asking for their laws on the subjects, and to historical societies commissions and departments, asking for their experience in dealing with the problems of preparing rosters and of preserving archeological remains. With the material thus collected the two committees prepared their reports. For the report of the committee on archeology, see Appendix F, and for that of the committee on rosters, see Appendix G.

JOHNSON-DODGE COLLECTION.

The most valuable donation that has come into the possession of the commission is the Johnson-Dodge collection of newspapers. The papers were originally given to the Arkansas Historical Association, but never actually came into its possession. In June, 1910, Col. Benjamin S. Johnson, on behalf of himself and Mrs. George E. Dodge, wife of Colonel Johnson's former partner in law, sent the collection to the secretary of the commission. It is now in his possession. It comprises twenty-six bound volumes of the *Arkansas Daily Gazette*, covering the period from 1868 to 1877, inclusive, and other years; eight volumes of the *Arkansas Daily Democrat*, covering most of the period from 1878 to 1882; seven volumes of the *Little Rock Daily Republican*, 1872-74; two volumes of the *Record Herald* for 1876; three volumes of *Harper's Weekly*, 1873-74; four volumes of *Leslie's Weekly*, 1872-74. It is to be hoped that with this as a nucleus the commission will be able to gather together a rich collection of newspaper files.

PUBLICATIONS OF THE HISTORICAL ASSOCIATION.

The law furthermore imposes upon the commission the duty

"to coöperate with the secretary of the Arkansas Historical Association in preparing and publishing the future publications of said association." Hitherto the commission has printed and supervised the publications of the historical association. As the last general assembly made no appropriations for this purpose, the commission could not do that work. However, the manuscript for the third volume has been prepared. These publications should be continued. They are essential to the life of all historical work in the State. They probably will do more to rescue from oblivion historical material and to arouse and to sustain general interest in local historical work than all the other factors together. So impressed with the importance of this work were they that the last commission, in their report to the governor, said:

"The first and foremost element in any permanent historical policy is the continuation of the publications of the Arkansas Historical Association. This organization has shown that it has in it the elements of success and should receive energetic support. * * * The periodical volumes issued by the association should embrace accurate and exhaustive chapters on all phases of the State's history—educational, political, religious, legal, social, military and industrial. The Arkansas Historical Association is the agency through which these publications should be issued, for it is the only agency by which the State can enlist the services of scholars and investigators."

The least that the State can consider doing is to print these publications. Otherwise they cannot be issued; for the small receipts from the sales of the volumes scarcely pay for stamps, stationery, express charges, clerk's hire and other necessary expenses. Hitherto the closest relation has existed between the work of the association and that of the commission. This harmony and articulation should continue. The State, through the commission, should keep in the closest touch with the historical association. The State should continue to print the publications of the association, and the commission is the best agency through which the State can supervise the printing. Whether it is best to make a distinct appropriation for this purpose, as in the past, or to make the publications a charge on the printing fund, as is the printing of the commission, is a subject for the legislature.

to decide. The commission is of opinion that it should be a charge on the printing fund. In any case, provision should be made by the forthcoming general assembly to print two volumes.

RESIGNATION OF EX-SENATOR BERRY.

About the middle of October, 1910, Hon. James H. Berry tendered his resignation as a member of the commission. It is a matter of regret that he found it necessary to take this step. Governor Donaghey appointed Hon. J. E. Wood of Marianna to fill the vacancy. The chairman of the commission thereupon appointed Mr. Wood a member of the roster committee.

RECOMMENDATIONS.

The commission respectfully makes the following recommendations:

1. PUBLICATIONS.—That the publications of the Arkansas Historical Association be made a charge on the printing fund.
2. CONFEDERATE CENSUS.—That a law be passed requiring the assessor in each county to take a census of all living ex-Confederate veterans in his county. The law should make it the duty of the commission to prepare and distribute to the assessors the necessary blanks, and of the assessor to file with the commission a certified copy of said census.
3. ARCHEOLOGY.—That the next general assembly should pass a law authorizing the commission to solicit and receive, on behalf of the State, deeds to lands on which mounds and other archeological remains are located. Where parties owning mounds are unwilling to deed them to the State, the law should authorize the commission to enter into contract with the owners whereby they surrender control over the mounds to the extent that the commission alone be authorized to excavate or to grant permits to excavate and to remove remains therefrom. The act should also prescribe penalties for violations of rules laid down by the commission for the protection of the mounds.
4. APPROPRIATIONS.—That the general assembly be asked

to make the following appropriations for the support of the work of the commission for the next two years:

Salary of secretary for two years.....	\$3,600.00
Traveling expenses of the commission and their secretary	500.00
Stamps, furniture, cases and other necessary expenses	900.00

Total	\$5,000.00

Respectfully submitted,

E. A. McCULLOCH, Chairman,
J. H. REYNOLDS, Secretary,
JOHN N. TILLMAN,
A. C. MILLAR,
J. E. WOOD,
J. J. DOYNE,
H. B. MCKENZIE,
J. F. MAYES,
CLARA B. ENO,

Commission.

Little Rock, Ark., December, 1910.

APPENDIX A.

CHIEF JUSTICE E. A. McCULLOCH, Little Rock, *Chairman.*
PROF. J. H. REYNOLDS, Fayetteville, *Secretary.*

PRES. JOHN N. TILLMAN, Fayetteville. PRES. J. J. DOYNE, Conway.
DR. A. C. MILLAR, Little Rock. HON. H. B. MCKENZIE, Prescott.
HON. JAMES H. BERRY, Bentonville. HON. J. F. MAYES, Fort Smith.
MISS CLARA B. ENO, Van Buren.

THE STATE OF ARKANSAS. ARKANSAS HISTORY COMMISSION.

(ACT OF MAY 31, 1909.)

CIRCULAR NO. 4.

AN ACT.

TO CREATE THE ARKANSAS HISTORY COMMISSION AND TO DEFINE ITS DUTIES.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas,* That there is hereby created and established the Arkansas History Commission. The headquarters of the commission shall be at the state capitol in apartments to be set aside for its use by the governor, or such other place as may be designated at any time by the general assembly. The object and purpose of said commission are the care and custody of official archives, the collection of materials bearing on the history of the State from the earliest times, the editing of official records and other historical sources, the encouragement of historical work and research, and the performance of such other work as may be required by law.

SEC. 2. That the said commission shall consist of the chief justice, the presidents of the University of Arkansas and of the State Normal at Conway, and of six others to be appointed by the governor subject to confirmation by the senate. At the first meeting of the commission the six appointive members by lot shall divide themselves into six classes, whose terms of service shall expire respectively at the end of two, four, six, eight, ten and twelve years. After the first commission, the term of service of appointive members shall be twelve years. The beginning of the several terms for the purposes of this act shall be January 1, 1909. Appointees to fill vacancies occasioned by death or resignation shall serve merely for the unexpired terms of their predecessors. That said commission shall hold at the state capitol at least one regular meeting each year and as many special meetings as may be necessary, and at said meetings five members shall constitute a quorum. The commissioners shall

receive no compensation for their services; only the necessary expenses incurred by them in attending meetings shall be allowed. The commission is empowered to adopt rules for its own government and for the conduct of business committed to its charge, to elect a secretary, and to perform all other acts necessary to carry out the purposes of this act. The commission may call upon the governor for such rooms in the new capitol as its needs require, unless another place is designated by the general assembly of the State, and it is hereby made the duty of the governor to set apart said rooms for the exclusive use of the commission.

SEC. 3. It shall be the duty of the commission to receive, classify and arrange convenient for public use all official archives that may come into its custody; to take charge of and to care for the archives now in the basement of the old capitol and to supervise their removal to the new statehouse; to prepare for publication an inventory of official archives in the several departments of state government; to assist the state officials in the removal of their archives to the new capitol; to collect and preserve all files of such Arkansas newspapers as may be presented to the commission and to bind such of them as the funds of the commission will permit; to have repainted or retouched the old pictures now at the statehouse; to collect the portraits of pioneers, of eminent Arkansans, and the pictures of historic homes and scenes; to collect and preserve aboriginal and Indian relics and memorials of the Mexican and Civil wars; to prepare and publish a roster of all troops from Arkansas in all wars in which our people have participated; to collect, classify and preserve all manuscripts, diaries, journals and papers of historical value pertaining to Arkansas and Arkansans; to collect and prepare for publication data pertaining to the soldiers from Arkansas in the war between the states and the war with Spain; to have general supervisory control over all excavation of mounds and other places for relics; to select, edit and publish such state papers as the resources at its command will justify; to coöperate with the secretary of the Arkansas Historical Association in preparing and publishing the future publications of said association; to build up at the state capitol a museum, art gallery and library, rich in the sources of Arkansas history; to submit to the governor a biennial report, setting forth in detail the work of the commission. All records, papers, archives and historical material coming into the possession of the said commission shall be and remain the property of the State; said commission shall act merely in the capacity of a trustee for the State.

SEC. 4. The agent of the commission in carrying out the provisions of this act shall be a secretary elected by the commission, who shall serve at the pleasure of the commission. He shall devote his entire time to the work of the commission, for which he shall receive \$1,800 a year. It shall be the duty of said secretary to carry out the provisions of this act under the rules and instructions laid down by the commission.

SEC. 5. That any state, county or other official is hereby authorized and empowered at his discretion to turn over to the commission for permanent preservation any official books, records, documents, original papers and newspaper files not in current use in his office. When so surrendered, copies therefrom shall be made and certified by the secretary of the commission upon the application of any person interested, which certification shall have all the force and effect as if made by the officer originally

in the custody of them and for which the same fee shall be charged, to be collected in advance.

SEC. 6. That there shall be placed at the disposal of the commission sixty copies of every state publication except the supreme court reports, the same to be used by the commission in exchanging with other states and societies for their publications. All printing, blanks, stationery and circulars for the commission or its secretary shall be executed by the public printer and shall be paid out of the general printing fund.

APPENDIX B.

CHIEF JUSTICE E. A. McCULLOCH, Little Rock, *Chairman.*
PROF. J. H. REYNOLDS, Fayetteville, *Secretary.*

PRES. JOHN N. TILLMAN, Fayetteville. PRES. J. J. DOYNE, Conway.
DR. A. C. MILLAR, Little Rock. HON. H. B. MCKENZIE, Prescott.
HON. JAMES H. BERRY, Bentonville. HON. J. F. MAYES, Fort Smith.
MISS CLARA B. ENO, Van Buren.

THE STATE OF ARKANSAS.

ARKANSAS HISTORY COMMISSION.

(ACT OF MAY 31, 1909.)

CIRCULAR No. 5.

THE LAW.—In 1905 the general assembly created a temporary Arkansas History Commission, and in 1907 continued it two years longer. Among other things, the commission materially assisted in bringing out the first two volumes of the publications of the Arkansas Historical Association, and conducted a campaign for a larger appreciation of our duty to the records of the past. Impressed with the wisdom of the commission's recommendations, by act approved May 31, 1909, the general assembly reorganized on a broader scale and made permanent the work of the commission. The old commission, though temporary, blazed the way and laid the foundation for a great work. The law of 1909 is comprehensive, and, when executed, will place Arkansas among the most progressive states in the collection and preservation of her history. It imposes upon the commission heavy duties, the most important of which may be briefly summarized as follows: (a) The classification and care of the public archives of the State at the capitol; (b) the collection at the capitol of all books and publications, including newspaper files, bearing on Arkansas history; (c) the building up at the capitol of a museum of Arkansas history, including Mexican and Civil War relics, aboriginal and Indian remains, and relics that will rehabilitate the social, economic, commercial, educational and

religious life of the past; (d) the collection of pictures of eminent Arkansans, of historic events and of scenes characteristic of different conditions and periods in the life of our people; (e) the preparation of rosters of all Arkansas troops in different wars; (f) the coöperation with the Arkansas Historical Association in bringing out the publications of that society.

THE COMMISSION.—The agency through which the law provides for this work to be carried out is the Arkansas History Commission, composed of the chief justice of the supreme court, the president of the University of Arkansas, the president of the State Normal, and six other members appointed by the governor, subject to the confirmation of the senate. In accordance with the act, Governor Donaghey on June 15 appointed the commission named above. The members receive no compensation for their services. They are quite willing to undertake the work, provided they have the active coöperation of the public. It is a cause that should appeal to all public-spirited citizens. We have already neglected our history too long. Much valuable material has been permanently lost. Officially, the State has said this loss must cease. It remains to give life to the law. To do this the people must assist.

NO FUNDS.—The executive agent of the commission provided by the law to carry out its provisions is a salaried secretary. But unfortunately the act was passed so late in the session as to render an appropriation impossible. Hence the commission is absolutely without funds. Yet at its meeting held at Little Rock, July 5, 1909, so impressed were the members with the serious loss to the cause that two years of inactivity would bring that they decided to organize and carry forward as much of the work as possible.

PROPOSED WORK OF THE COMMISSION.—An archeological map of the State will be prepared, giving the location and important facts concerning all mounds and other prehistoric remains. Rules governing relic hunting and the excavation of mounds will be prepared and promulgated. This work will be preliminary and preparatory to a larger activity in the field of archeology when the State provides funds. The commission will also mature plans for preparing rosters of the veterans of all wars in which our people have engaged; they will study the plans

adopted in other states, and will be prepared to recommend definite lines of action in their biennial report to the governor. The commission will, moreover, coöperate with the Arkansas Historical Association in getting the manuscript of the third volume of its publications ready for the press. By doing this necessary preliminary work, the commission hopes to obviate the evils that otherwise would have attended the failure of the general assembly to make an appropriation and to have the cause thoroughly organized when the next legislature convenes.

AN APPEAL.—For the commission to do this and other work, a small sum of money to meet current expenses is absolutely necessary. The condition of the State's finances would not justify borrowing the money with the expectation that the next legislature would reimburse the commission. The only alternative is voluntary contributions. The correspondence will be large, and there will be some necessary traveling expenses. The public can assist in two ways—one by furnishing information called for, and another by aiding financially. It should be remembered that this is purely a patriotic work, that the commissioners are all busy men, and that they receive nothing for their services. Surely if the members are willing to carry on this work gratuitously, the people of the State can afford to make a small contribution to meet the current expenses. To all patriotic, public-spirited citizens the commission therefore appeals. Let us have your hearty coöperation at once. A small expense fund of five or six hundred dollars is needed. Only absolutely necessary expenses will be incurred. People making contributions may rest assured that their money will be properly applied and that it will be productive of good results. All contributions should be addressed to the treasurer of the executive committee, Dr. A. C. Millar, 1210 Rock Street, Little Rock, Arkansas.

APPENDIX C.

REPRESENTATIVES OF THE COMMISSION.

County.

- Arkansas—W. H. Halliburton, DeWitt.
Ashley—Monroe Smith, Hamburg.
Baxter—J. M. Morton, Mountain Home.
Benton—Charles H. Cargile, Bentonville.
Boone—J. Seaburn Holt, Harrison.
Bradley—W. S. Goodwin, Warren.
Carroll—L. H. Fancher, Berryville.
Calhoun—C. L. Poole, Hampton.
Clarke—Samuel M. Samson, Amity.
Clecot—E. A. Bolton, Lake Village.
Clay—B. L. Royall, Piggott.
Cleburne—George W. Reed, Heber.
Cleveland—P. M. Holmes, Rison.
Columbia—J. H. Askew, Magnolia.
Conway—Carroll Armstrong, Morrilton.
Craighead—Arthur Turner, Jonesboro.
Crawford—L. H. Southmayd, Van Buren.
Crittenden—Frank Smith, Marion.
Cross—E. D. Robertson, Wynne.
Desha—J. W. Davis, Arkansas City.
Drew—W. A. Brown, Monticello.
Faulkner—Frank Robins, Conway.
Franklin—T. A. Pettigrew, Charleston.
Fulton—J. W. Meeks, Mammoth Spring.
Garland—C. T. Cothan, Hot Springs.
Greene—B. H. Crowley, Paragould.
Grant—T. E. Toler, Leola.
Hempstead—J. S. Carrigan, Hope.
Hot Spring—Powell S. Carden, Malvern.
Howard—W. C. Rodgers, Nashville.
Independence—V. Y. Cook, Batesville.
Izard—J. B. Baker, Melbourne.
Jackson—S. D. Campbell, Newport.
Jefferson—J. M. Lucey, Pine Bluff.
Johnson—A. M. Ward, Clarksville.
Lafayette—R. L. Searey, Lewisville.
Lawrence—H. Clay Sloan, Black Rock.
Lee—J. S. Wood, Marianna.
Lincoln—A. J. Johnson, Star City.
Little River—S. C. Reynolds, Ashdown.
Logan—Anthony Hall.
Lonoke—T. C. Trimble, Jr., Lonoke.

Madison—J. R. Stotts, Huntsville.
Marion—J. W. Black, Yellville.
Miller—Will Steel, Texarkana.
Mississippi—W. J. Driver, Blytheville.
Monroe—J. P. Lee, Clarendon.
Montgomery—Jerry Witt, Mount Ida.
Nevada—W. V. Tompkins, Prescott.
Newton—J. F. Carlton, Jasper.
Ouachita—C. W. Smith, Camden.
Phillips—Greenfield Quarles, Helena.
Perry—P. L. Burrow, Perry.
Pike—J. C. Pinnix, Murfreesboro.
Poinsett—Ed L. Jacobs, Harrisburg.
Polk—Mark P. Olney, Mena.
Pope—J. A. Livingston, Russellville.
Prairie—C. B. Thweatt, DeVall's Bluff.
Pulaski—M. E. Dunaway, Little Rock.
Randolph—C. H. Henderson, Pocahontas.
Saline—J. S. Utley, Benton.
Searcy—J. M. McCall, Marshall.
Sebastian—H. P. Warner, Fort Smith.
Sevier—Abe Collins, DeQueen.
Sharp—Sam H. Davidson, Evening Shade.
St. Francis—S. H. Mann, Forrest City.
Stone—Dan McCurry, Mountain View.
Union—A. P. Reynolds, El Dorado.
Van Buren—J. G. Fraser, Clinton.
Washington—C. H. Brough, Fayetteville.
White—Eugene Cybert, Searcy.
Woodruff—A. L. Hutchins, Augusta.
Yell—John E. Chambers, Danville.

APPENDIX D.

Little Rock, Ark., December 27, 1910.

To the Arkansas History Commission:

Dear Sirs—During my term as treasurer I have received contributions as follows:

February 19, T. C. McRae, for Prescott.....	\$ 13.00
April 19, P. L. Burrow, for Perry.....	2.00
April 19, J. M. Lucey, for Pine Bluff.....	5.00
April 19, Henry Moore, for Texarkana.....	5.00
April 19, Greenfield Quarles, for Helena.....	10.00
April 19, P. S. Carden, for Malvern.....	4.25
April 28, S. H. Mann, for Forrest City.....	10.00
May 2, M. E. Dunaway, for Little Rock.....	13.50
May 25, Frank Smith, for Marion.....	10.00
May 25, C. H. Cargile, for Bentonville.....	4.00
June 8, S. M. Samson, for Amity.....	6.00
June 11, B. H. Spradlin, for Mountain Home.....	5.00
September 12, C. H. Cargile, for Bentonville.....	1.00
December 26, M. E. Dunaway, for Little Rock.....	1.00
December 26, C. H. Brough, for Fayetteville.....	15.50
 Total	 \$105.25

Paid out—

February 21, cash for account book.....	\$.15
June 8, check to J. H. Reynolds, secretary.....	45.10
October 24, check to J. H. Reynolds, secretary.....	36.60
	—\$81.85
	 \$23.40

Respectfully submitted,

A. C. MILLAR, Treasurer.

Little Rock, Ark., June 20, 1911.

To the Arkansas History Commission:

Balance on hand December 27, 1910.....	\$23.40
1911.	
January 19, received of Mr. Driver of Osceola.....	\$10.00
January 30, received of Mr. Trimble of Lonoke.....	7.50
January 30, received of Dr. Brough of Fayetteville.....	2.00
	—
	\$42.90

Respectfully submitted,

A. C. MILLAR, Treasurer.

Little Rock, Ark., August 24, 1911.

To the Arkansas History Commission:

Balance on hand June 20, 1911.....	\$42.90
June 21, check to J. H. Reynolds, secretary.....	\$17.90
June 21, check to H. B. McKenzie.....	25.00

Respectfully submitted,

A. C. MILLAR, Treasurer.

APPENDIX E.

MUSTER ROLLS.

The following sent in muster rolls of Confederate soldiers: Hon. James R. Turner of Helena sent a copy of the muster roll of company B, twenty-third Arkansas volunteers; Dr. W. A. Brown of Monticello furnished original muster rolls of the old men's company enlisted from Drew County in 1863 under Capt. I. A. G. Handly, and of the old men's company enlisted from Ashley County in 1863 under Capt. Benjamin Tiner; copies of the roll of company I, first Arkansas infantry, organized at Monticello May 4, 1861, under Capt. James A. Jackson (original roll in hands of J. N. Hammock of Monticello), and of the muster roll of company C, third Arkansas infantry from Monticello; and from Eugene H. Levy, private in the army of northern Virginia, the original muster roll of company E, third regiment of Arkansas volunteers under Capt. Thomas F. Nolan, enlisted at Champagnolle, June 30, 1861. The roll is dated at Camp Barton, Virginia, August 31, 1861.

APPENDIX F.

REPORT OF COMMITTEE ON ARCHEOLOGY.

Rules and Regulations for the Preservation of Mounds and Other Antiquities.

To the Arkansas History Commission:

Your committee appointed to formulate rules and regulations for the preservation of antiquities in the State of Arkansas respectfully report as follows:

Preliminary to the preparation of the regulations here proposed, the committee made an effort to secure the experience of other states in dealing with the same problem. We corresponded with historical societies, commissions, state departments of archives and history, and with the bureau of ethnology at Washington. Contrary to our expectations, we find that there is but little experience in regulating excavations and relic hunting for our guidance. Seemingly, other states have not found it necessary to regulate it. In any case, they have not dealt seriously with the question.

LEGAL DIFFICULTIES.—The first difficulty with which the commission will meet in any effort to regulate excavations is a legal one. Where antiquities are located on state lands, the power of the State is plenary, and no legal difficulty will arise. Such regulations as the State may choose to prescribe can be enforced. But the number of mounds on state lands is negligible. Practically all our antiquities are situated on private lands. Their control is in the owners of the land. The State, against the wishes of the owners, cannot prescribe and enforce rules governing the excavating of mounds and the taking of relires out of the State.

WHAT MAY BE DONE.—With respect to mounds even on the State's lands, the commission is powerless to impose penalties for violating rules that they might enact. The legislature should pass a law prescribing penalties for violations of rules prescribed by the law or by the commission, touching excava-

tions on the State's land. In regard to antiquities on private lands, something can and should be done.

I. *Public Opinion.*

In the first place, a public opinion in favor of preserving the remains for the benefit of science and history must be created, for the simple reason that no commission rule nor state law will avail against general indifference. To be effective all regulations of the commission must be supported by a vigorous, popular sentiment that will not permit the destruction of antiquities nor their removal beyond the boundaries of the State. This state pride can be developed. The first task of the commission is to create such a public opinion.

II. *Deeds and Contracts.*

In the next place, when the commission has secured the confidence of the people, they should secure from the owners deeds to the land on which mounds and other archeological remains are located. In this matter the commission should act as the agent of the State and should have the deeds drawn in favor of the State. Where desired, the owner could reserve the right in the deed to use the mounds as a refuge for live stock during seasons of overflow. The commission, as custodian, should file and preserve such deeds. Where the owners cannot be induced to convey the land to the State, they should be asked to enter into a written contract with the State, whereby they would surrender to the State the sole power of controlling all excavations and digging into the mounds and taking relics therefrom. This contract would not affect the owner's title in the land, but would divest him of the power to authorize excavations and removal of relics and vest said authority in the State. The latter would exercise this power through the commission or some other agent. When the State thus secured control of the remains either by deed or by contract, it would be competent for the State, through the commission, to make rules governing excavations and removal of relics. Appropriate recognition should be given to such land owners for their patriotism. If such a plan is adopted, the former owners might be

appointed by the commission official custodians of said antiquities and should be instructed not to allow any excavations except upon receipt of written permission granted by the commission. Having shown a patriotic interest in such a tangible form, they would probably be zealous in preserving the remains. Every consideration, scientific, historical and public, suggests that all mounds and archeological remains should be owned or controlled by the State. They should belong to the public and be preserved for all time. Their donation to the State by the owners will be no appreciable injury to the value of the land, but will be of untold value to science and history. So long as they remain in the hands of private parties they will continue to be wantonly destroyed. The State alone can safeguard the public's interest in them.

III. *State Law.*

The legislature should be asked to authorize the commission to receive from private parties deeds and contracts for the control of such remains. The law should furthermore direct the commission to promulgate rules for the government of excavations and the removal of relics from either the State's lands or lands that have either been deeded to the State for this purpose or whose control has been surrendered to the State by contract. The law should also prescribe penalties for the violation of the rules laid down by itself and by the commission and should authorize the commission to prosecute all violations of their regulations. It should also be made the duty of the prosecuting attorneys to have indicted and prosecuted all persons violating the law respecting the preservation of antiquities.

REGULATIONS.

The legal right of the commission to make and enforce rules being bestowed by the State and legal control being granted by property owners, the subject-matter of the rules may receive attention. On this subject the federal government has more suggestions for our guidance than any other source. That government has made and enforced regulations for the preservation of antiquities located on the public lands. The Archeological and Historical Society of Ohio has followed sound principles

in dealing with the mounds in that State. The suggested rules below are drawn largely from these two sources.

1. No excavations of mounds or removal of relics from remains located on lands belonging to or under the control of the State of Arkansas shall be permitted except upon a permit granted by the Arkansas History Commission.

2. The agent of the commission in granting such permits shall be the secretary, who shall exercise the power in accordance with rules laid down by the commission.

3. Permit for examining remains, excavating archeological sites and gathering relics will be granted to scientific societies, museums and institutions of learning only.

4. Permits shall not cover a larger area than the applicant can cover thoroughly.

5. Applications for permits shall be filed with the secretary of the commission and accompanied by a definite outline of the proposed work, giving name of the society or institution making the request, date when the work will begin, length of time to be devoted to it, the person who will be in charge of the work, and the equipments. The application should include an exact statement of the character of the proposed work, whether examination, excavation or collecting relics, the name of the public museum in which the collections are to be preserved. The application should further give a plan or description of the particular site or area to be excavated or searched, so definite that it may be located on the map.

6. No permit for the removal of any ancient monument or antiquity which can be permanently preserved under the control of the State and remain an object of interest shall be granted.

7. No permit shall be granted for a longer term than two years. Failure to begin within six months of the time named or to prosecute the work with diligence after beginning shall void the permit without notice by the secretary.

8. All relics collected are the property of the State of Arkansas and cannot be removed from the State without permission of the secretary of the commission. Before relics are taken out of the State they shall be submitted for examination

to the secretary, who shall retain for the state museum such as he may deem the interests of the State demand, and shall require other relics in exchange for those which he authorizes to be taken out of the State.

9. Permits shall not be issued unless the party is equipped with the necessary paraphernalia to guarantee scientific work. There must be a surveyor, who shall survey the remains and surroundings before work is begun; a competent photographer, who shall photograph the remains before excavations begin and at every stage in the process. The necessary notes and drawings of the remains and of every important step in the excavations for scientific purposes shall be taken and preserved.

10. Mounds once entered upon shall be entirely excavated to the base and every item of interest shall be photographed and entered upon the plat of the surveyor.

11. No party shall be permitted to enter upon a piece of work until he is prepared to carry it to completion.

12. A condition attached to all permits shall be that the grantee shall at the close of the work deposit with the Arkansas History Commission a copy of all surveys, photographs and publications of the results of the investigation.

13. Recipients of permits shall report the progress of their work at the close of each season or at such times as the secretary may require and in such form as he may prescribe, including catalogue of collections and copies of photographs.

14. The secretary shall furnish recipients of permits with copies of the rules of the commission governing excavations.

15. After the completion of their work, recipients of permits shall restore the lands upon which they have worked to their customary condition.

16. All permits are terminable at the discretion of the commission.

17. Any person or persons appropriating, excavating, injuring or destroying without permission from the commission any historic or prehistoric ruin or monument or any antiquity on lands under the control of the State shall be arrested and prosecuted.

18. Any object taken or collection made on lands owned or controlled by the State or placed by the owner under the

control of the commission, without a permit or contrary to the act and these rules and regulations, may be seized wherever found and at any time, by the proper officers, and shall be deposited in the state museum.

19. All collections made under permits granted by the commission and authorized to be taken out of the State shall be preserved in the public institution or museum designated in the permit and shall be accessible to the public. Said collection shall not be removed from said museum without permission of the secretary of the commission, and then only to another public museum; and when any public museum, which contains a collection made under these regulations, shall cease to exist, every such collection reverts to the State of Arkansas and shall be deposited in the museum of the State.

J. H. REYNOLDS,
JOHN N. TILLMAN,
J. F. MAYES.

Little Rock, Arkansas, December, 1910.

APPENDIX G.

REPORT OF THE COMMITTEE ON ROSTERS.

To the Members of the Arkansas History Commission:

We, your committee appointed to inquire into the feasibility of preparing rosters of Arkansas troops in all wars in which our people have participated, and to make suggestions as to ways and means of performing such a task, respectfully report as follows:

We have conducted quite a correspondence with other states and with the war department to secure data upon which to base our report. We respectfully make the following recommendations touching a Confederate roster:

A. The first thing to be done is to review and compile all legislation and executive and military orders and proclamations, State and Confederate, governing the organization of troops, including enlistments, conscription, exemptions. Copies of all this matter should be brought together and properly arranged.

B. Locate and ascertain exact condition of official records containing rosters, lists, rolls, etc., of the soldiers. All of this material should be in the office of the adjutant general at Little Rock. But unfortunately little or nothing is to be found there. All such records seem to have disappeared. A thorough search of all papers in the basement of the old state house might disclose some such papers. Pay rolls of troops, while in the service of the State and before entering the Confederate service, ought to be in the office of the auditor. An exhaustive search of that office might disclose such papers. In any case, whatever exists about the state house should be located and utilized.

C. The status and contents of all Arkansas records of the Confederate government now on file in the adjutant general's office in the war department at Washington should be ascertained. The general government has come into possession of many records of the Confederate government. The general government has been generous in compiling and printing, at great expense, the "Official Records of the Union and Confederate Armies," and it has authorized the compilation and pub-

lication of rosters of the Union and Confederate armies. This work is still far from completion.

The present status of the work is shown in the following letter from the adjutant general under date of August 29, 1910:

Mr. J. H. Reynolds, Secretary Arkansas History Commission, Fayetteville, Ark.:

SIR—Referring to your letter of the 24th instant, in which you ask to be informed whether an official of your commission will be permitted to copy the roster in the war department of Arkansas troops in the Confederate States army, I regret to say that under a war department order of February 23, 1897, which is still in force, and to which the present secretary of war has repeatedly declined to make any exception, I am prohibited from complying with requests such as that made by you.

Herewith is enclosed a copy of the order mentioned for your further information, from which you will see that the department was compelled to establish the rule, not merely because of the great expenditure of time and clerical labor involved in complying with the rapidly increasing demands for copies of or abstracts from such reports, but chiefly because it had become imperatively necessary, in order to save the rapidly decaying original records themselves from total destruction, to restrict the handling of them to cases in which such handling is absolutely necessary.

With respect to your request to be informed as to what plans the department has for completing and publishing the roster of officers and enlisted men of the Union and Confederate armies, the compilation of which was authorized several years ago, I beg leave to say that the department is now, and for some time past has been, earnestly engaged and utilizing the services of every employe that can be spared for the purpose of compiling the roster. Considerable progress has been made, but the compilation is by no means complete, and it is impossible to make any statement as to even an approximate date when the compilation will be ready for publication. The labor involved in this work is enormous, and while considerable progress in the work of compilation has been made, yet much more remains to be done. Confederate records, of which no duplicates are in the possession of the war department, are being received from time to time, and the records already in the possession of the department are being compiled for publication as rapidly as practicable. As the records being compiled are voluminous, and as it seems probable that additional records will be received for some time to come, and as further legislation by congress will be necessary before the roster can be published, you will readily see that considerable time must necessarily elapse before the roster will be available for the use of those who are interested in it.

Yours respectfully,

C. W. CLURE, Adjutant General.

The order of the war department of February 23, 1897, referred to in this letter, reads as follows:

"Compilation or statements relative to individual officers, enlisted men or organizations will not be furnished from the records on file in

the record and pension office for historical, memorial or statistical purposes, or for publication, or to complete the records of States, societies or associations.

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"Because of the great danger of the destruction, loss or misfiling, through handling by inexperienced persons or those not under the control of this department, of the muster rolls and other regimental or company records, index record cards, and all other similar records, which are on file in the record and pension office, and which pertain wholly or chiefly to the personnel of the armies of the various wars, the handling of those records will be restricted exclusively to the specially trained employes of that office, and no information will be furnished from them except as hereinbefore provided, or as may be otherwise required by law."

From this it will be seen that the war department will not permit a representative of our commission or of the State access to these records with a view to copying same for publication, nor will it allow its own officials to make copy of them for the State. Hence, for the present the commission is absolutely barred from Confederate records at Washington, the most promising source of information. It is also apparent from the letter that the war department, in compiling the material for a roster of Union and Confederate veterans, is no ways near the end of the task, and cannot give any definite information as to when the material will be ready for the printer. The department is acting under the following law, passed February 25, 1903: "That under the direction of the secretary of war, the chief of the record and pension office shall compile, from such official records as are in the possession of the United States and from such other authentic records as may be obtained by loan from the various states and other official sources, a complete roster of the officers and enlisted men of the Union and Confederate armies."

Hence, the State is apparently face to face with insuperable difficulties in its efforts to have prepared a roster of Confederate veterans. The question arises whether an attempt should be made to prepare such a roster from unofficial sources. If so, the following means may be used in its preparation:

1. Many muster rolls, pay rolls, descriptive lists, company books, etc., are still in the hands of individuals and societies. These might be collected, either being donated or loaned to the State, and utilized in the work.
2. Papers in the hands of the historical committee of the

Confederate veterans may be found helpful. Some years ago the veterans attempted to collect such material through a historical committee. This matter is now in the hands of Hon. J. Kellogg of Little Rock, the representative of that committee. A report of the work of the committee is to be found on pages 174-175 of Volume 1 of the Publications of the Arkansas Historical Association. Doubtless this collection can be secured for the State. What the papers contain our committee has no way of knowing.

3. An exhaustive search through all papers now in all offices at the state house should be made.

4. Newspaper Files and County Records.—When companies were formed, especially at the outbreak of the war, lists of the enlisted men were often printed in local newspapers. Sometimes the lists were filed among the county records. These lists, while unofficial and often inaccurate, might be utilized.

5. Census of Living Confederate Veterans.—The memory of men, while treacherous, is nevertheless a source of information. An enumeration of all living veterans within the State would yield quite a body of facts for a roster. In 1907 the State of Alabama passed a law requiring the tax assessor to make a full enumeration of all persons residing in the State who had served in the army or the navy of the Confederacy or in any organization of state troops. The assessor was required to secure the full name, present address, date and place of birth, date, state and county of enlistment, the name and number of the several companies and regiments in which service was performed, and how such service terminated. Blanks were prepared and furnished by the department of history and archives of the State. The original copy of the census was filed in the office of probate judge and a certified copy sent to the department of archives and history. The success of the measure is shown in a letter to the secretary of our commission, dated September 5, 1910, by Hon. Thomas M. Owen:

"In reply, you are advised that the work was entirely successful. We secured the enrollment of practically every survivor of the Confederate army now residing in the State, with details as to service. Of course in many cases, owing to defective memory, the latter details were very meager, but by subsequent correspondence and conference we have been able to clear up almost all of the difficulties."

Such a census could be taken with comparatively little expense, and would, in addition to furnishing material for the roster, place the commission in touch with a body of men from whom other valuable historical data could be secured.

6. Organization of Material for Publication.—When the material is in hand, the next question is arranging it for the printer. The best plan is that adopted by the war department at Washington. Prepare a single alphabetical list of the entire enrollment of each regiment, battalion or independent company. In the list disregard company organizations. Only one, instead of ten alphabets, under each regiment is required. The list of names is arranged alphabetically, the company letter is placed after each name, and a brief paragraph containing important facts as to his military history is given to each man. Preceding this alphabetical list, regimental and company statistics are given, including date of organization, date of muster in and of muster out, total enrollment of regiment and of companies, casualties, etc.

7. Great Undertaking.—If all the records and papers were accessible, it would be quite an undertaking. The Ohio roster commission's report occupies eleven volumes. But under existing conditions, with practically no official records, it is almost an impossible task. The work of collecting the material will be great, while that of classifying and verifying will be enormous. The unofficial character of the material from which the roster would be compiled would require an immense amount of labor in the way of verifying with a view to eliminating errors. Numerous errors would probably creep in. Then, too, being prepared from unofficial sources, there would always be doubt about its accuracy, and in scientific historical circles would be looked upon with distrust.

Respectfully submitted,

J. E. WOOD,
CLARA B. ENO,
J. J. DOYNE.

Little Rock, December, 1910.

PROCEEDINGS OF LATER MEETINGS OF THE ARKANSAS HISTORY COMMISSION.

By J. H. Reynolds.

PROCEEDINGS OF THE SECOND MEETING OF THE COMMISSION.

In pursuance of a call issued by the chairman, the Arkansas History Commission met at 2 p. m. Tuesday, December 27, 1910, in the gentlemen's rest room of the Marion Hotel. There were present Chief Justice E. A. McCulloch, President John N. Tillman, President J. J. Doyne, Dr. A. C. Millar, Hon. H. B. McKenzie, Miss Clara B. Eno and Prof. J. H. Reynolds. Hon. J. E. Wood of Marianna, appointed to fill the vacancy created by the resignation of Hon. James H. Berry, also took his seat as a member. The secretary read the administrative report of the commission to the governor, and after some discussion it was approved. Reports of the committees on archeology and roster were read and adopted. The treasurer presented his report and it was approved. The treasurer was directed to pay the expenses of members who should present accounts.

The legislative program as outlined by the executive committee was adopted, and Hons. H. B. McKenzie, J. E. Wood and Miss Clara B. Eno were constituted a committee to look after the interests of the commission before the legislature. There being no further business, the commission adjourned.

PROCEEDINGS OF THE THIRD MEETING OF THE COMMISSION.

At the call of the chairman the Arkansas History Commission met in the office of the chief justice of the supreme court at 2 o'clock, June 20, 1911.

Present, Justice E. A. McCulloch, chairman, Dr. A. C. Millar, Miss Clara B. Eno, Hon. Frank Mayes, Hon. J. E. Wood and Prof. J. H. Reynolds, secretary. Absent, President John N. Tillman, President J. J. Doyne and Hon. H. B. McKenzie. President Tillman and Mr. McKenzie were in the city, but were

detained at a meeting of the board of trustees of the University of Arkansas.

The minutes were read and approved. The report of the committee on legislation was read and ordered filed; the committee was discharged and a vote of thanks of the commission to the committee was voted. (See Appendix A.)

The secretary read his report containing recommendations. After discussion it was adopted. (See Appendix B.)

The treasurer, Dr. A. C. Millar, rendered an account, showing a balance of \$42.90 in the treasury. H. B. McKenzie's account for expenses, amounting to \$25.00, incurred in trips to Little Rock on the work of the commission was allowed and ordered paid. The secretary rendered an expense account and it was allowed. The treasurer was directed to pay the secretary \$17.90 on said account, and the secretary was instructed to draw on the expense fund of the commission for the balance.

The commission discussed at some length the advisability of electing a secretary as provided by law. The question was finally referred to the executive committee with instructions to investigate and report later.

It was voted to accept the proposition of W. P. Agee of Hope to sell his archeological collection to the commission for \$600.00. The secretary was authorized to expend \$10.00 a month clerk's hire and \$5.00 for stamps.

There being no further business, the commission adjourned subject to the call of the chairman.

APPENDIX A.

REPORT OF COMMITTEE ON LEGISLATION.

To *Hon. E. A. McCulloch, Chairman, and Members of the Arkansas History Commission:*

Your committee on legislation have to report as follows: After making a canvass of the legislature with a view to selecting the best men to introduce and push the desired measures, we proposed and had introduced the following bills:

S. B. 259 (Friedell), making the expense of printing the volumes of the Arkansas Historical Association a charge on general printing fund.

S. B. 103 (Holt), providing ways and means of obtaining a roster of surviving Confederate veterans in the State under the direction of the secretary of the commission. (See Appendix C.)

H. B. (Glover). The general appropriation bill had items covering the expenses of the commission.

S. B. (Dill), covering the work of archeological research as recommended by the secretary of the commission and the committee for this purpose in their last report.

All of the above measures except the last were passed, but unfortunately the item in the general appropriation bill for the secretary's salary was vetoed by the governor.

The chairman of the committee made four visits to the legislature and wrote numerous letters and enlisted the support of friends of the work as far as he could.

Great credit is due to the untiring efforts of the secretary of the commission in bringing about the desired legislation.

Respectfully submitted,

H. B. MCKENZIE, Chairman,

J. E. WOOD,

CLARA B. ENO.

Little Rock, June 20, 1911.

APPENDIX B.

SECRETARY'S REPORT.

To the Members of the Arkansas History Commission:

For the last six months the secretary has been primarily occupied in coöperating with the committee on legislation consisting of Hon. H. B. McKenzie, Hon. J. E. Wood and Miss Clara B. Eno. The legislative program adopted by the commission at the December meeting consisted of four measures: (1) A law making the publications of the Arkansas Historical Association a charge on the state printing fund; (2) A law requiring the assessor to take a census of all living ex-Confederate veterans in his county; (3) A law authorizing the commission to secure control either by deed or by contract of lands on which archeological remains are located; and (4) an appropriation for the maintenance of the commission.

The chairman of the committee on legislation was especially active in framing the bills, in securing their introduction, in presenting them before committees and in corresponding with the legislature in their behalf. The enactment into law of our legislative program is largely due to his untiring efforts. The appropriation for the commission was inserted in the general appropriation bill for the support of state government. The chairman of the commission, Justice McCulloch, rendered valuable assistance. He, with the secretary, appeared before the ways and means committee of the house and secured the insertion in the general appropriation bill of the items for the support of the commission. In the midst of the rush near the close of the session, he also rendered timely assistance in arranging for recognition of our friends in calling up our bills.

The commission is to be congratulated in the fact that we secured the passage of all our measures except the archeology bill. This measure passed the senate and would have passed the house if it had been called up. It is doubtful whether any other state has acted so quickly in effecting a thorough

organization of the cause of preserving its history so soon after the movement was begun. It should be remembered that this movement is only about six years old, and that the legislature has never voted down a single one of our bills.

Of course, we all regret the necessity which required Governor Donaghey to veto the item for the salary of the secretary of the commission. However, it should be said in justice to the governor that the veto was not prompted by hostility to the work of the commission; on the contrary, he has been a friend to the cause since its first organization.

FUTURE WORK.—In the absence of a salaried secretary, what may the commission do during the next two years? The following lines of work are suggested for the consideration of the commission.

1. EXECUTIVE COMMITTEE.—The executive committee, with the powers and duties bestowed in the resolution creating it, should be continued. Among other things, that committee should assist in bringing out the third volume of the publications of the Arkansas Historical Association. It should also wait upon the secretary of state and arrange for the protection of the papers now in the basement of the old state house. Moreover, it should get in touch with Mr. L. C. Gulley of Little Rock and secure, if possible, the transfer of the papers now in his possession. There are also paintings of distinguished Arkansans hanging in the old senate chamber, and probably in other rooms of the old state house. There are loose papers and record books scattered around in the basement of the old state house. Doubtless a search would disclose books and papers in other parts of the building. The executive committee should be directed to investigate the matter and arrange for the safe keeping of all such books and papers of historical value. Moreover, the books and papers of the now defunct Arkansas Historical Society in the hands of Mr. Fay Hempstead should be secured.

2. ROSTER COMMITTEE.—There is much work that the roster committee can do. It should be charged with the duty of continuing the collection of muster rolls, pay rolls and other Confederate papers; of securing for the commission the registration book of the Arkansas veterans who attended the reunion at Little Rock and the papers now in the hands of Hon. J. Kel-

logg of Little Rock, who is acting for the now defunct history committee of the Confederate veterans of Arkansas. Furthermore, the committee, with the help of the secretary, should prepare and have printed blanks for the assessor to use in taking a census of Confederate veterans in their respective counties.

3. ARCHEOLOGY COMMITTEE.—Unless funds can be secured for the excavation of mounds, the committee on archeology cannot do much. However, the committee should be directed to raise the funds necessary to secure the Agee collection. Mr. W. P. Agee of Hope, Arkansas, has a magnificent collection of carefully selected relics taken almost exclusively from southwest Arkansas. He proposes to let the commission have the collection for \$600.00. Hon. H. B. McKenzie and the secretary have both examined the collection and agree that the commission should secure possession of it. Governor Donaghey generously offers to give \$100.00 toward paying for it, and two other citizens have promised to assist. The secretary has on file an itemized list of the collection.

4. THE SECRETARY.—The office of unsalaried secretary should be continued under the rules adopted at the first meeting of the commission until such time as the secretary provided by law can be elected, and with the approval of the executive committee he should be allowed a small sum each month for stamps, stenographer's hire, etc.

5. PERMANENT QUARTERS.—Some time in February the chairman and the secretary of the commission waited on the governor and requested that he assign the rooms immediately over the state treasurer's office as the permanent quarters of the commission. So far as the secretary knows, no final action has been taken by the governor. The executive committee should be directed to make representations to the governor on the subject, and, when the quarters are assigned, to have them completed ready for occupancy when we secure a secretary.

Very truly,

J. H. REYNOLDS, Secretary.

Fayetteville, Arkansas, June 18, 1911.

APPENDIX C.

An act to be entitled: "An act to make an enumeration, or census, of the Confederate soldiers residing in the State of Arkansas, and to provide for the payment therefor."

Be It Enacted by the General Assembly of the State of Arkansas:
Be It Enacted by the People of the State of Arkansas:

SECTION 1. That it is hereby made the duty of the tax assessors of the various counties of the State to make a full enumeration, or census, of all persons residents of their respective counties, who served in the army or navy of the Confederate States of America, or in any of the organizations of the state of their residence from 1861 to 1865, whether as officers, enlisted men, militia or home guards for local defense, or in any other military or naval capacity in the War of Secession.

SEC. 2. The enumeration, or census, shall show the full name, the present postoffice address, the date and place of birth, the date, the state and county of enlistment, the name and number of the several companies and regiments in which service was performed, and how such service terminated, as by parole, discharge or imprisonment. It shall be made out on blanks to be prepared and supplied by the secretary of the Arkansas History Commission. After the enumeration has been completed, the original list shall be filed in the office of the probate judge of the county where made, for permanent preservation, and a carefully compared copy duly certified under oath by the tax assessor shall be forwarded to the secretary of the Arkansas History Commission for preservation therein. The original and copy shall each be arranged alphabetically and made out in ink, in a legible hand, or prepared in typewriting.

SEC. 3. That the compensation for making said enumeration, or census, shall be ten cents for each name enrolled under the provisions of this act, said sum to be paid on sworn statements of the amount due, to be checked and compared by the Arkansas History Commission and approved by the governor,

and an appropriation is hereby made to cover all of said several sums; and the state auditor is authorized and directed to draw his warrant in favor of the several tax assessors in accordance with the terms of this act.

SEC. 4. The sum of five hundred dollars, or so much thereof as may be necessary, is hereby appropriated to cover the expense of printing the necessary blanks, circulars and forms to make said enumeration, or census, and for postage and transportation charges thereon. The state auditor shall draw his warrant to cover such expense or expenses, on bill duly received therefor, certified by the secretary of the history commission, and approved by the governor.

SEC. 5. That said enumeration, or census, shall be completed and filed within twelve months after the passage and approval of this act.

PROCEEDINGS OF THE FOURTH MEETING OF THE ARKANSAS HISTORY COMMISSION.

In response to a call issued by the secretary and sent out under the direction of the chairman, the Arkansas History Commission met in the travelers' rest room of the Marion Hotel at 2 o'clock, August 24, 1911, for the purpose of electing a secretary and transacting such other business as might legally come before it. Present, Justice E. A. McCulloch, chairman; Presidents A. C. Millar, John N. Tillman and J. J. Doyne, Miss Clara B. Eno, Hon. H. B. McKenzie and Prof. J. H. Reynolds, secretary.

The executive committee was directed to take under advisement the question of permanent quarters of the commission and to confer with the governor respecting the same. The same committee was also instructed to complete the purchase of the Agee archeological collection and to supervise its transfer to the state house. They were further authorized to make a payment on the same as soon as money is available.

The commission took up the question of electing a permanent secretary, and, after some discussion, on the motion of Mr. McKenzie the commission adopted by unanimous vote the following resolution:

"Whereas, The recent veto of the salary item of the secre-

tary of the Arkansas History Commission renders the payment of said salary impossible until another appropriation is made;

“Whereas, The general assembly in many instances has appropriated to cover salary and other expenses of public officials provided for by pre-existing law, but for which there was no appropriation;

“Whereas, Dallas T. Herndon of Georgia, a man well qualified for the secretaryship, has agreed to accept the office, trusting to the good faith of the next legislature to reimburse him, on condition that the commission on its part, while assuming no financial liability, agree to recommend to the next general assembly an appropriation to cover said salary;

“Therefore, be it Resolved, That the history commission hereby elect Dallas Tabor Herndon secretary on the conditions named above.”

The secretary was directed to wire Mr. Herndon of his election. Upon the motion of the secretary the commission appropriated \$100.00 to be used by Mr. Herndon in visiting Madison, Wisconsin; Montgomery, Alabama; Jackson, Mississippi, and other points, for the purpose of studying the organization of local historical work.

The following resolution was adopted:

“Resolved, That the thanks of this commission be extended to Prof. John Hugh Reynolds for his service as temporary secretary of the commission since its organization. His time and services have been given freely and without recompense, but he has earned the lasting gratitude of the commission and of the people of Arkansas, acknowledgment of which is hereby recorded.”

The commission then adjourned.

E. A. McCULLOCH, Chairman,
J. H. REYNOLDS, Secretary.

CHESTER ASHLEY.

By U. M. Rose.¹

Almost everyone knows that Chester Ashley was one of our early pioneers, that he attained to great eminence and distinction as a lawyer, a jurist and statesman; but I have reason to believe that most persons are quite ignorant of the main details of his life. He was a man of many activities and of uncompromising energy. He was not only extremely successful in his labors at the bar and in the higher walks of political life, but he was not less so as a planter and financier. A man of great breadth of view and versatility of mind, he applied his energies to various pursuits and enterprises, which he conducted with such discrimination and skill that they were crowned with equal success, in so much that many ascribed to good luck results that were mainly due to superior abilities, great industry and wise foresight. Any way, he may be safely regarded as furnishing the type of the successful man; especially when we consider the fact that in his character as a pioneer in a very new country his labors were mostly confined to fields where resources were few, and opportunities were necessarily limited. Ashley was also one of the founders of Little Rock; a proceeding in which he took the liveliest interest from the time that the idea of establishing a future capital of a State as yet unborn,

¹U. M. Rose was born in Marion County, Kentucky, March 5, 1834, and was left an orphan at thirteen without means. He secured an elementary English education, and after studying law in a private office in Lebanon, he graduated from the Transylvania Law School at Lexington in 1853. He moved to Batesville, Arkansas, where he practiced his profession. In 1860 he was appointed chancellor and moved to Little Rock, which since then has been his home. Judge Rose won distinction in his chosen profession and has served as president of the Arkansas Bar Association and of the American Bar Association. He is the author of Rose's Digest, being a digest of the first twenty-three volumes of the Arkansas supreme court reports. He has never written much, but is a polished speaker and his addresses have been preserved. President Roosevelt appointed him as one of the representatives of the United States at the second Hague peace conference in 1907.—EDITOR.

in the midst of a vast wilderness as yet hardly invaded by the woodman's axe, down to the last day of his active and busy life. With the foundation and building of the present city of Little Rock his name is inseparably connected. It may be that there were others that contributed to that ultimate result in a no less degree, but they lacked the shining qualities that lead to posthumous fame.

Chester Ashley, easily the first leader of the bar of the State, stands in the forefront of everything connected with our state bar; and his name and example may well furnish inspiration for its younger members, to say nothing of those who are more advanced in years. Since his time we have had many learned and able lawyers, but none, I think, that have reached the professional eminence that he attained, and which he long held with undisputed sovereignty.

His merits have received the most ample recognition at the hands of his contemporaries. In laying out the city of Little Rock a street adjoining the state house where all the courts, state and federal, were held in his time—the still surviving scene of his forensic labors—was named after him; and when the boundaries of the city were afterward extended, Chester street, now one of its main thoroughfares, was perpetually dedicated in his honor. In 1848, soon after his death, Ashley County was created by legislative act, and was so named in order that his name might not perish from the face of the earth, and might be held in perpetual remembrance.

These are testimonials far more indestructible than monuments of brass. The Damascus of thousands of years ago is Damascus still. In spite of countless vicissitudes and revolutions, the names of Athens and of Rome are still heard on the lips of men, surviving a civilization and languages that have passed away save for the purposes of the student and the historian. The names of Persepolis and of Thebes still live on, though the cities themselves have long ceased to exist. Our connection with the tribes of the North American Indians that once inhabited our country can hardly be traced save by acts of mutual hostility; and yet the names conferred by them on lakes and rivers, mountains and towns, transmitted into our own language, will be perpetuated when that language shall no longer

be spoken, but shall have perished as so many others have done. In this way the name of Chester Ashley, inseparably blent with the history of the State, will no doubt be bequeathed to a posterity extremely remote, when we, in our turn, may be referred to as men living in ancient, less enlightened and simpler times.

For the accomplishment of my present task my qualifications are not of the best. I never saw Chester Ashley, and I have never made a particular study of his life. I doubt whether such a study could avail anything now after many years of silence and neglect. Under such disadvantages I could not, of course, undertake to write his biography. The most that I can venture upon is a mere sketch; an enterprise upon which I am encouraged to embark by reason of the fact that the printed notices that I have seen of Mr. Ashley are excessively meagre, not unaccompanied with errors which may mislead.

I have, however, had some peculiar advantages for learning from report very much concerning him that is not generally known to the present generation, and which, unless I commit it to writing, must soon pass into complete oblivion. It happened in this wise: The late George C. Watkins, formerly chief justice of our supreme court, a well-known and accomplished jurist, who died in 1872, had been associated with Mr. Ashley in the practice of law for some years prior to the death of the latter. I became similarly associated with Judge Watkins after his retirement from the bench. Many of the books and papers of the former firm of Ashley & Watkins, with a lingering remnant of their unfinished business, thus came into our possession. During the five years that this connection continued we had in our office as an assistant Mr. John E. Knight, a native of Newburyport, Massachusetts, who came to Little Rock in an early day, and who there for a time edited a newspaper devoted to the interests of the Democratic party, to which Ashley belonged, during the time that he was engaged in political pursuits. Mr Knight was a gentleman of intelligence, a person of much and varied information, and of the very highest integrity. I was for some years also thrown into almost daily intercourse with the two sons of Chester Ashley, William E. and Henry C. Ashley, men who, having inherited a large estate, had devoted themselves to no particular calling, finding sufficient employment in their own

private affairs; men of most honorable character and humane and generous sentiments. All these are dead many years ago except Mr. Knight, who, surviving to a very advanced age, died in the year 1901.

When I first came to the State a few years after the death of Chester Ashley, everyone seemed to have known him, and to deplore his death as a public calamity; which undoubtedly it was. From common discourse one could not but perceive that the advocate, the jurist and the statesman who had lately passed away had towered very much above the most of his local contemporaries; hence it was that afterward I felt some curiosity to learn whatever might be learned as to his character and career. So in years gone by I talked not only with the persons that I have mentioned, but with many others who had known him intimately; never, however, with the most remote thought of writing down any information thus acquired.

Notwithstanding all the clamor and confusion there is in this world, when a generation passes away it seems to have disappeared with the silence of a quiet dream, or as the stars—other worlds than ours—that sink imperceptibly and with awe-inspiring stillness behind the western hills. Not very long since I could have found a mine of information in living contemporaries of Chester Ashley, who died more than three-score years ago. Today I think that not one that knew him is left. The last, I believe, was my friend, Col. Asa S. Morgan of Camden, who died within the current year, and who met Ashley in Little Rock in 1843.

I am well aware that I must have forgotten much that I heard of Mr. Ashley when accurate information was easily obtained. If we did not forget much we could not remember anything. I have often wondered why it was that some of his many friends did not reduce to writing an account of his life; but no doubt it was because, as has often happened, his survivors thought it not worth while to commit to paper what everyone knew; and so nothing was done until the curtain dropped.

I must add that it is not my intention to pronounce a eulogy on Chester Ashley. Nothing could be farther from my thoughts, and it may be well for the reader to remember that my impressions are derived chiefly from those who were his intimate per-

sonal friends during his life, and who mourned him affectionately when he was dead. It remains, however, true that I cannot recall that I ever heard anyone say anything derogatory to his character. Whether this circumstance was due to the charity that is usually bestowed on the dead, or to his own merits, or to both, is a matter that I must leave to the judgment of others.

Chester Ashley, a descendant of the old Puritan stock, was born at Amherst, Massachusetts, on the first day of June, 1791. When he was three years old his parents removed to the town of Hudson, in the State of New York, a village situated on the river of that name, about thirty miles south of Albany, where he was brought up. Of the events of his early life I can say nothing except that he was educated at Williams College, Massachusetts, where he graduated in 1813. This college, founded in 1735 by Col. Ephraim Williams—killed September 8, 1755, near Lake George during the war then raging between England and France, known as the French and Indian War, in which the American colonies took an active part—though not one of our largest institutions, has an ancient and a highly honorable record. Its course of study has always been extensive, and its standard of proficiency exacting. Probably no similar institution of our country has furnished more men of distinction in the various departments of human endeavor in proportion to the number of students that have entered its walls. Soon after his graduation, young Ashley began the study of law in the celebrated law school maintained at Litchfield, Connecticut, established by Judge Reeve, in 1784; a school that was long without any American rival, the legal *alma mater* of a great number of the most famous lawyers, statesmen and jurists of the last century.

Judge Reeve was an old-fashioned lawyer of high ability, chief justice of the supreme court of Connecticut from 1798 to 1814, the author of various treatises on the law (mostly concerning the domestic relations) that went through many editions, and were much esteemed by the profession. He was a most honorable man, who believed in the old methods, whose teaching was thorough and exhaustive. His memory ought to be inexpressibly dear to our mothers, our wives, sisters, female cousins, aunts, and such other ladies as may happen to be in the world now or hereafter; for he was the first human being that sug-

gested and advocated the right of women to own and dispose of their property; a doctrine since almost universally adopted in England and in this country, though not in time to reward his hopes. If our modern suffragettes have the least sense of gratitude they surely will cause a monument to be erected to his memory. Not one of the great lawgivers or jurists of earlier times—Moses, Solon, Lycurgus, Coke, Bacon or Bentham—had ever even deigned to consider the sacred but neglected rights of women. Judge Reeve lived on to a good old age, dying just before Christmas, 1823, when his former student, Chester Ashley, was a married man, living in the very small but somewhat aspiring hamlet of Little Rock, situated on the most remote fringe of the civilized world. One step farther and the explorer would be in Mexico, or in the lands of the Indian tribes, still only partly explored.

On finishing his studies in the law school, in obedience to an impulse westward that was then very general among the enterprising young men of the east, Chester Ashley, in 1818, removed to Edwardsville, Illinois—a village twenty miles northeast of St. Louis, Missouri, the center of a coal mining and agricultural region, intending to make that his future home. After engaging in the practice of the law at that place, where he stayed for two years, he was drawn to the old French town of St. Louis, having then a population of less than two thousand, and presenting but little to foretell its future growth and prosperity. It was here that he fell in with a very remarkable man of whom but little is now known, but who was then well known, at least by character, to nearly every man and woman in Missouri and Arkansas, William Russell, an extremely active, energetic and enterprising young man, then engaged in laying the foundation of a princely fortune by entering lands and purchasing them from the United States; who had a wide influence on the destiny of the young lawyer. To the abstracter of titles of St. Louis and Little Rock, the name of Russell will always be a household word; for in an early day he became the owner of much of the land on which those cities are built. Meeting young Ashley, with that shrewd insight that guided him in his real estate investments, he perceived that he was possessed of no ordinary ability, and that he had the traits of

discrimination, decision of character and indomitable energy, determination and perseverance that were so conspicuous in his own personality. These two eminently practical and ambitious men soon formed a friendship, based on mutual confidence and esteem, that was only dissolved by the death of Ashley.

Russell had previously made himself acquainted with the general topography and resources of the territory of Arkansas, and was especially captivated by the picturesque hills, overlooking the broad river on which the city of Little Rock is now located, though there was not even a hamlet or any collection of houses there then; the little and obscure capital of the territory being then what was known as the Arkansas Post, some sixty or seventy miles lower down the river.

We get a curious glimpse of that place as it appeared in the year 1800 in a book written by Perrin du Lac, called "Travels in Upper and Lower Louisiana" ("*Voyage dans les deux Louisianes*"), published in Paris in 1803, and now long since out of print. It was afterward translated into German and was republished in that language in Vienna. It seems never to have been translated into English. Probably no one knows now who the author was; but it would seem that he was a person of some consequence, as he had a letter of introduction to Mrs. Washington; and stayed two or three days on a visit at Mt. Vernon in the early days of the eighteenth century. It will be remembered, of course, that at that time Missouri, then including Arkansas, and constituting a part of Louisiana, belonged to France, and was subject to the dominion of the Emperor Napoleon I. It was in 1718 that the famous John Law, then engaged in his financial enterprise commonly known as the Mississippi Bubble, that finally bankrupted France, received from the Duke of Orleans, then prince regent, an extensive grant of lands on the Arkansas River, on which he founded a colony at the Arkansas Post. On the collapse of his financial plan the colonists abandoned the spot and drifted down to the Cote d' Or below New Orleans, where, it is said, some of their descendants are still to be found. In the latter half of the eighteenth century a new colony was formed at the same Arkansas Post by Canadian French immigrants who had descended the Mississippi River in boats. It was this colony that Perrin du Lac visited. He tells us that it comprised about six hundred

inhabitants, and that when he was there none of the population were at home except women and children, with a very few old men; the rest being in the forest in search of game. The number of skins exported from there annually, according to his account, was very large. After the cession of Louisiana to the United States, the French immigration to the Arkansas Post ceased, and Americans arrived in considerable numbers. Though the site was low and alluvial, valuable improvements were made and hopes were entertained that as the capital of a future state it might become a city of great importance. It was at this time more populous than Chicago, which in 1823, with not a better site, had only ten or twelve houses. Hygiene and sanitation in those days were but poorly understood. New Orleans, built in a swamp, had prospered; and it was generally thought that Cairo, Illinois, immortalized by Dickens as Eden, would some day be the site of a great city. Similar hopes were entertained for Arkansas Post. It certainly had the advantage of being easily accessible all the year to commerce with the rest of the world by means of steam navigation, which could hardly be said of places higher up the river.

Russell saw clearly that the point then known as the *little rock*, being much nearer the center of the State—the place where the wide alluvial bottom lands of the Mississippi River ceased, and the forest-clad hills set in on both sides of the river—the point where a great Indian trail had crossed the river from time immemorial—had the qualities that must at no distant day recommend it most highly for the site of the future capital. There can hardly be a doubt that it was on the suggestion of Russell, and with these circumstances in view, that Ashley resolved to make Arkansas his future home; at any rate he came to the place where Little Rock now is, in the year 1820; and it seems probable that many consultations between these two must have taken place before they resolved to make investments in the site of a prospective town, consisting of a succession of hills, rising one above another like the seats of an amphitheater, all covered with great oaks and pines, which cast dark shadows on the vines and undergrowth beneath, forming a thick tangle, rendering intrusion laborious and difficult. Jutting out into the river was a promontory of solid rock, now forming the abut-

ment of a railway bridge, known to navigators as the *little rock*, in contradiction to the precipitous and lofty cliff a mile higher up the river, overlooking the whole landscape far and wide in every direction, then and ever since known as Big Rock, at present crowned by the buildings pertaining to the United States military post, the *Acropolis* of the city that was to be. Everywhere nature asserted her ancient and magnificent despotism that put to shame the dynasties of kings. Primeval forests that had only lately echoed to the tread of the destructive white man extended everywhere. Immediately on the opposite bank of the river, formed of alluvial soil, a forest, consisting of lofty cottonwoods, oaks, elms, cypresses and other deciduous trees of enormous size, serried in ranks, almost impassable, stretched in an unbroken phalanx for two or three miles to the hills beyond.

At the time of the arrival of Ashley, as I learn from the valuable history of Arkansas written by Mr. Hempstead, there were only two houses in the area now covered by the city of Little Rock; one near the *little rock*, then and ever since also commonly known as the Point of Rocks, built of slabs, a mere shanty erected with a view to enable the occupant to enter the land on which it was situated under a pre-emption claim; the other a small log cabin near the intersection of Fourth and Scott streets as now existing. Of this vast and almost unbroken solitude up to 1820, it might be said in the language of the poet:

“The sound of the church-going bell
These valleys and rocks never heard,
Never sighed at the sound of a knell,
Or smiled when a Sabbath appeared.”

But on the 4th day of July of that year, Rev. Cephas Washburn—whom I knew long afterward—then a missionary to the Indians, in the little log cabin just mentioned preached the first sermon ever heard in these parts to a congregation of fourteen persons. Possibly Chester Ashley may have been present to rescue the situation from a number that would have been extremely unlucky.

The situation was surely a singular one. Here in this

vast wilderness was a young man of decided talents, unusually well trained and equipped for the practice of law, that had taken up his permanent residence in a spot where there was neither town, nor village, nor hamlet, nor courthouse, nor judge, nor even a justice of the peace, that judicial unit, nor any visible emblem or item of the paraphernalia of the law. Almost the first sign of approaching civilization was to be found in the fact that on the 10th day of April, 1820, a postoffice was there established, called for the want of another name, Little Rock; as if nature herself—so prodigal in that vicinity—had stood sponsor to the place. This postoffice was a medium of communication intended to serve a wide area of the surrounding country. There was also a postmaster, and his name was Amos Wheeler, who really lived, though the necessity of his doing so in that capacity was not very obvious.

Considering these surroundings, one may well ask, How did Ashley manage to subsist in such a wilderness? That is a question that I have asked myself, and to which I can find no answer. One might suppose that, like a better man than any of us, his food was locusts and wild honey. Metaphorically, at least he was—

“Eating the air on promise of supply.”

But how did he pass his time here in this solitude where he could only look on the forest and the dark flowing river, flowing on forever in search of an unknown sea, the emblem of eternity; where he could only hear the wind sighing in the tree tops, or listen to the delirious chant of the mocking bird by day, or to the plaintive call of the whippoorwill at night? No doubt he must have had some books to read; and probably he was preparing for an active career that he could foresee by the eye of a faith that was quite strong enough to remove mountains.

We have had many instances of young lawyers who have encountered enormous hindrances in entering on their profession, and of others who began the practice in obscure and unpromising places; but all these pale their ineffectual fires before the example of Chester Ashley, who deliberately sat down to begin his professional career in the woods, waiting for a city

to be built in which his professional services might be required. He did not go to court; he waited for the courts to come to him. That Lord Chesterfield, Dr. Franklin or any other practical man that ever undertook to moderate the exuberance of youth by the lessons of wisdom derived from long experience, would have approved of the indiscretion and recklessness thus exhibited, is a proposition that will not receive the assent of any discreet and responsible person. The next step of Ashley exhibited a degree of rashness almost inconceivable in one of his insulated and purely expectant condition. If he had heretofore slighted the favors of Fortune, he now resolved to defy her openly, and to dare her to do her worst. Without asking her leave, he went off and got married.

Strange and unaccountable as it may seem, Cupid had lately been making his invisible rounds through the western wilderness, where he could hardly expect to find many victims to reward his industry and perseverance. There was then, and is now—though much less conspicuously—on the west bank of the Mississippi River below St. Louis, an old French town named St. Genevieve after the patron saint of Paris; a quaint old town that held its head pretty high, and still claimed to be superior to St. Louis in regard to age, respectability, general importance and prospects of future grandeur. It had a fairly large trade, and possessed a monopoly of ores of various kinds of minerals dug out of mines in southern Missouri and hauled overland to St. Genevieve for reduction or for shipment. After the cession of Louisiana in 1803, the old Creole town awoke from its torpor, and started into new life. From far and near came many Americans, and settled there, adding much to the activity and prosperity of the place. Among these new settlers there was a prominent gentleman named Eliot, who had a daughter named Mary W. W. Eliot, who, as she grew up, became renowned throughout the region for her beauty, her intelligence, her wit, her grace, and her many substantial virtues and accomplishments. She had a somewhat illustrious ancestry, since she was lineally descended, through the Virginia branch of the family, from John Eliot, the "Apostle of the Indians," who succeeded in translating the Bible into the language of the Algonquin tribe of Indians, and having it printed under his

own direction and supervision. To translate, without the aid of grammar or dictionary, the entire Bible into a rude and imperfect language implies an amount of labor that almost staggers belief. Though the success attending the performance of this task fell fearfully short of what he hoped, one cannot but admire and respect the self-sacrifice and devotion that rendered such an achievement possible. A few copies of that remarkable book are still extant. On account of their rarity and their singular history, they command fabulous prices; but as there is not a man now living that can read a word of it, it is almost the precise equivalent of a book that was never written at all.

Considering her personal charms and her many other excellent and more enduring qualities, it is perhaps needless to say that Mary Eliot had many suitors; but her preference was given to young Ashley, who was not bad looking, who was highly intelligent and well educated, who had a very manly and pleasing address, and who displayed in his conversation an unusual amount of good, strong common sense, together with a certain elevation and decision of character not always found in the youth of the country at that time.

Socially speaking, St. Genevieve was not the equal in variety and brilliancy of the Paris of Louis XVIII, the then reigning monarch; yet it had a good many intelligent citizens of both sexes; it was situated on one of the world's great highways of commerce; it had a good deal of vitality; and from its houses and verandas one could see the steamboats passing up or down the river, or landing or departing from the wharf. To its inhabitants it was a dear old place with a golden future. To leave such a spot in exchange for another in a boundless wilderness, in a region of country that had hardly had a history since De Soto threaded its interminable forests in 1542, presented an alternative that many young women would have respectfully declined. But in this instance the young lady showed that constancy and devotion which has been so often displayed under like circumstances, and which has contributed so much to the honor of the sex. On the 24th day of July, 1821, the young people were married at St. Genevieve; and soon afterward they journeyed to the remote and not easily accessible place that was to be their happy home for many years. No doubt the young

bride felt a pang on parting from her family and the friends of her youth; and perhaps—like her mother Eve on leaving Paradise—

“Some natural tears she dropped, but wiped them soon.”

This was certainly a very romantic episode, worthy of the forest of Arden, and of the haleyon days of the good duke, and of Orlando and Rosalind, spent under the greenwood trees. Rash as this step may have seemed—a mere tempting of fate—neither bride nor groom ever had the least cause to regret the venture; for he through life was the most affectionate of husbands, and she the most devoted of wives. It is said that fortune favors the brave; which may be true, though such favors often assume the form of an early death.

It was now that the real life work of Chester Ashley began. We do not know what provision he had made for the reception of his bride in her new home. It could not have been very splendid; but we may be sure that it was the best that circumstances would admit; and that any want of the comforts and elegancies of life were amply compensated by the buoyancy of youth and the inspirations of hope with which they regarded the future. Besides, the young people of that day had not been corrupted by luxury, as many of their descendants have since become, if report may be trusted.

The capital was removed to Little Rock by an act of the territorial legislature in 1821; and the second session of that body met there on the first day of October of that year. Just prior to this time Russell and Ashley, who had acquired an interest in some of the lands on which the present city of Little Rock is located, joining with a few other persons interested in the enterprise, made a survey designating the plan of the future city, conferring on it the unpretending name which it still bears; and this was followed by a bill of assurances, dated November 20, 1821, granting to the public forever the streets and alleys indicated in a plat of the survey thereto annexed, which covered only a very small part of the ground at present occupied by the city.

On the east the limits of the town were fixed by the “Quapaw Line,” beyond which the lands were owned by the Quapaw

Indians; a mere remnant of the powerful nation that De Soto encountered on crossing the Mississippi River.

No sooner had the capital been located at Little Rock than there ensued a considerable influx of population. Nevertheless the growth of the town and of the State was slow; and that for reasons easily explained. Foreign emigration was diverted into other avenues by reason of the institution of slavery then existing here. The same thing was true in a less degree as to immigration from the northern states. The lands of this State were for the most part heavily timbered; and the labor and expense of clearing them had a most deterring effect on immigration. In addition, the rich alluvial lands of the Mississippi valley proper, and along the other rivers, required extensive levees and drainage in order to fit them for cultivation, involving an amount of capital that was not then forthcoming. Moreover, in the great northwest was a vast region of prairie lands just opened for occupation that might be utilized at once; and as they were free from the disadvantages just mentioned, they furnished a formidable competition which resulted much to the detriment of this State. In a later period Texas, with her immense plains of treeless lands, was another successful rival.

The growth of the new capital was also slow. When Feathertonhaugh, an English geologist, author of a book called "An Excursion Through the Slave States," twice visited Little Rock in the years 1833 and 1834, he found there only a village of about five hundred inhabitants. The surrounding country was wild. It was still the paradise of the hunter. In riding from Little Rock to Maumelle, twelve miles, he saw a large herd of deer and several flocks of wild turkeys; and in the region of the Hot Springs he tells us that bear hunting was a favorite pastime.

To the natural drawbacks under which the country labored must be added others, hardly less serious, imposed by the folly of man.

The inhabitants of the Territory looked forward to its admission into the Union as the dawn of a new era of activity and progress. When that auspicious time arrived it was signalized by a blunder that long checked development, that hung like a cloud over the rising commonwealth, and which excited the contempt and ridicule of many thinking men abroad.

The State was admitted into the Union by the act of congress of June 16, 1836.

When the first state legislature met in that year, the first act that was passed was one to create a bank to be called the "Real Estate Bank," the capital of which was to be raised by the sale of state bonds for the amount of two million dollars bearing interest at the rate of five per cent per annum. The next act created another bank called the "State Bank," whose capital of one million dollars was to be provided in the same manner. Both banks were allowed to lend money on the security of real estate. These charters contained the humane provision that funds belonging to minors and orphans might be deposited with these banks. How they were ever to be got out ultimately presented an interesting problem of more difficulty. All bills and notes of the State Bank were to be received for all debts due the State.

Compared with this wild-cat scheme, that of John Law was eminently sane and highly practical. Real estate, even in countries most thickly settled, where lands command the highest prices, is not regarded as forming a suitable basis for banking operations, owing to difficulties arising out of land titles, and to the impossibility of raising money promptly on such security in time of financial distress. In the case of these two banks it was provided that the security on the lands should assume the form of mortgages. Under the technical rules of procedure then prevailing in the courts, the time required for the foreclosure of such a mortgage might be reckoned at from three to ten years. It ought to have been plain to almost any schoolboy that when the capital of these banks was once lent out any further banking operations would be rendered impossible. Nevertheless it was claimed that by means of these banks the State would derive such benefits that taxation would be reduced or dispensed with, that public prosperity would be advanced; and, in short, that a financial millenium would ensue.

Probably there was not a man in the legislature that had the least knowledge or experience in banking; and when the banks had been organized the business was entrusted to a lot of men whose ignorance of finance would have bankrupted the

Bank of England with a speed not equaled by any former records.

We know how the experiment turned out. After a short and ignominious career both banks failed, and the State had not only to pay off her bonds, with large accumulations of interest, but had also to pay the debts created by the State Bank. These two banks were the Frankensteins that long continued to persecute the State by which they were created.

I mention this farcical episode because Ashley opposed the whole scheme, and would never have anything to do with either of them. But when people have got the notion that wealth can be increased simply by making promises to pay, and that the primeval curse that condemns man to eat his bread by the sweat of his face can be removed by an act of the legislature, discussion may as well cease.

But these were not the only things that retarded prosperity; for congress, not to be behindhand, opened a Pandora's box whose evils afflicted the country for many a year to come.

For a long period the whole policy of the government in regard to the public lands apparently consisted in a desire to get rid of them in as many ways as possible, and in the shortest possible time. Large grants were made as a reward for military services, for the benefit of sufferers by reason of various calamities, for colleges and schools, for the building of railways, all kinds of public improvements, and so on. These grants were not made of specific tracts; but scrip or warrants were issued to the beneficiaries, who were allowed to "locate" them on public lands within certain districts of the country, or on any surveyed public lands subject to sale by the government. The acts of congress making these grants, issued at different times, were for the most part carelessly drawn; often they were ambiguous, and not unfrequently they seemed to be in conflict. Taking them all together they presented a tangled maze that gave rise to an amount of litigation wholly without precedent. If nobody could tell with any degree of confidence what these laws meant, there was another body of similar laws, hardly less coherent, relating to a prior right of purchase by occupants who had settled on portions of the public lands, and had made improvements on them, whose rights were known as preëmption claims.

To make matters still worse, many of the government land officers scattered throughout the country, by their carelessness, ignorance and incompetence rendered what in some cases might have been plain almost hopelessly dark and obscure.

In places where it was supposed that lands might one day become valuable, various conflicting claims were located on the same lands, so that no one could tell where the real right lay. In Little Rock and Hot Springs every foot of land was plastered over with rival claims, so that no intending purchaser could buy anything more than a lawsuit. In St. Louis the situation was much the same. Under such conditions any rapid advance in prosperity was impossible. No sooner was one claim adjudicated than another, relating to the same land, would spring into existence; and, strange as it may seem, suits of this kind were still pending in the federal courts of Arkansas within ten or twelve years last past that were based on claims having their origin more than a hundred years earlier. Such claims were sometimes merely blackmailing devices; still they clouded titles and hindered alienation. Besides, not a few of them were rank forgeries. It must be added that the uncertainty of the law bred innumerable frauds, and gave rise to a new order of reprobates popularly known as land pirates, in whose eyes bribery, perjury and forgery were only venial offenses.

As frequently happens in new states, the first bar of Arkansas was largely composed of lawyers of exceptional learning and ability. Ashley soon made himself master of the intricacies of the land laws, thus enabling him and Russell to make their purchases advisedly, and giving to Ashley a reputation both in Arkansas and Missouri as to his knowledge thus acquired that was scarcely enjoyed by any of his rivals in the profession. As he started out as the head of the bar in this State, he so remained. Whenever there was important litigation anywhere within its borders, he was almost sure to be retained on one side or the other. Financially he prospered. In a few years he attained a competency, and built a large and stately dwelling with lofty columns after the old colonial style of architecture on the block bounded by Markham, Second, Scott and Cumberland streets, in the city of Little Rock. The house was shaded by trees of the primeval forest. Adjoining was the flower garden

under the care of Mrs. Ashley, who was extremely fond of flowers, and who was very successful in their cultivation; hence it was that for years flowers that bloomed in her garden went forth to crown many a bride and to deck many a bier. From that time Ashley lived in a style becoming a man of wealth; and it was in that home that was long exercised a refined and generous hospitality that until some years ago was still remembered by many persons with pleasure and gratitude.¹

The year 1844 marked an important change in the routine of the life of Ashley. It was a year of intense political excitement, marking an epoch in our national history; three weighty questions being then presented for the consideration of the American people. The first was what was known as the Oregon question, involving a conflict of claims of sovereignty between Great Britain and the United States to the Oregon region. The second related to the proposed annexation of Texas to the United States. The third pertained to the status of slavery in the District of Columbia and in the territories of the United States. Of these burning questions the first was the most alarming. Polk ran for the presidency on a war platform, declaring for the whole of Oregon or none, and the common watchword of his party was "Fifty-four forty or fight." Great Britain was equally bellicose. Lord Palmerston, the head of the British cabinet, declared that he did not see how war could be averted;

¹Having known Mrs. Ashley from 1856 until the time of her death, I wish to add my very humble tribute to her great worth. She was a bright, interesting woman of unusual conversational powers; but what most endeared her to a large circle of friends was her kindness of heart and her abiding sweetness of disposition that carried sunshine everywhere, and that marked every act of her life. Her talents and her graces, added to her sterling virtues, qualified her to shine in the best society of her time; and during her life she was the joy and the light of her household. She made a liberal response to the demands of charity, and was often to be found administering consolation to the afflicted with loving words, and providing substantial comfort in the abodes of sorrow and in the house of mourning. Thus with her active sympathy and benevolence she did so much good in the world. Though her last days were saddened by many calamities, she bore the hard strokes of fortune with uncommon and uncomplaining fortitude. On the capture of Little Rock by the federal troops in 1863, the Ashley mansion, where she had lived for many years, was occupied as the headquarters of the federal army, and she died in Little Rock, away from her home, in the house of a relative, on the 25th day of May, 1865.

and Palmerston was a fighting man. Polk was triumphantly elected. War would have promptly ensued if it had not been that Great Britain beheld dark clouds rising in the east, portending the Crimean War, which, after long negotiations, finally broke out in 1853. Under the circumstances wise counsels prevailed; the dispute was settled by diplomatic methods, and war, which would have inflicted incalculable evils on both countries, was avoided. The Texas question resulted in war with Mexico, and the slavery question brought about the great Civil War of 1861.

It was during the pendency of all these momentous questions, by which the public mind was intensely inflamed, that Ashley resolved to enter public life, which he could do with less reluctance, as he had by this time acquired what in those days was regarded as an independent fortune. Many who knew him argued ill of his proposed venture to obtain a seat in the United States senate to fill a vacancy caused by the death of Senator Fulton. Prior to that time he had taken but little or no part in political controversy, though it was known that he was a consistent member of the Jeffersonian and Jacksonian democracy. It was thought that his want of familiarity with political methods and political controversial literature would weigh heavily against him. Besides, Ashley could hardly be said to be "a man of the people" in the sense in which that phrase was commonly used. He was distinctively a lawyer, an advocate, and a man of affairs. He kept a carriage and horses, and lived in an expensive and elegant style, so that it was no unusual thing in those democratic days to hear him called a nabob or an aristocrat. Moreover, he did not need the office of United States senator; and there were not a few in his political party that needed it, and that needed it badly.

Ashley entered on his new enterprise with his usual directness, and with the energy that marked all his undertakings. He began a canvass that included every county in the State, then forty-eight in number. The speeches made by Ashley during this canvass surprised even his warmest admirers. Those who had feared that he would prove but a novice in a new enterprise said that he spoke as if he had spent his whole life in the exclusive study of political history and political literature

Two or three political opponents that started out to meet him in debate soon dropped off; and the opposing candidates for the place of senator, to whom I have no time to refer, though men of decided ability, preferred a separate campaign.

A year or two before his death Col. Ben T. DuVal of Fort Smith said to me:

"When a young man I witnessed the trial in Clarksville of the case of *Nicks vs. Rector* included in our reports. Mr. Ashley represented one of the parties, and the case was stubbornly contested. The manner in which Ashley conducted the trial excited my warmest admiration; and I still think that he was the most skillful trial lawyer that I have ever known. I afterward heard him make a political speech during the summer of 1844 to a large audience. He had a fine, resonant voice, and spoke apparently without the least effort, never hesitating for a word. He did not descend to any of the tricks of the demagogue; and the audience seemed to appreciate the compliment he paid them in raising the argument above the common level. He did not address his fellow-citizen as a pedagogue would address a bench of students; but he treated his audience as if they knew as much about the matters in dispute as he did himself, and as if he were taking them into his confidence by making such suggestions as occurred to him after much consideration; and such was the charm and impressiveness of his manner that from the beginning to the end of his discourse the audience followed him with undivided attention. Occasionally he indulged in touches of humor, but generally his language was serious. He managed in a way quite peculiar to himself to produce a tremendous impression.

"Those who had thought that Ashley could be easily beaten left out of their account two things. Mr. and Mrs. Ashley were both by temperament very sociable and very hospitable; and they carried the art of hospitality to a degree of perfection that I have never seen equaled. In their home there was never any sense of restraint, or striving for effect or display; nothing but a simple and genuine cordiality that made the visitor feel perfectly at home while there, and gave him a better opinion of his host and hostess and of himself when he went away. In this manner, as well as in others, Mr. and Mrs. Ashley had made

many warm, devoted and influential personal friends throughout the State. The other thing that they overlooked was that Ashley as a debater had but few living equals. Besides, they were mistaken in thinking that his manners were such as would fail to recommend him to the common people. It is true that he had an air of thoughtful dignity not displayed by the ordinary vote-seeker; but as this was evidently perfectly natural, and was accompanied by simple, friendly and sincere demeanor, without the least taint of pomp, vanity or affectation, it did not impair his popularity. I think that he succeeded better than he would have done if he had resorted to the devices more commonly adopted by those in search of popular favor."¹

The result of the canvass was that Ashley was triumphantly elected to the United States senate, where he took his seat on the day that James K. Polk was inaugurated as President of the United States.

However successful Ashley might have been in the courts of Arkansas, it is clear that he would not have acquired a thoroughly national reputation in that manner; but as he had appeared in the supreme court of the United States in various cases of interest and importance, he had, by the ability and learning displayed in his arguments, impressed himself on the country at large as one of the ablest and most profound lawyers of his time; besides, some of his campaign speeches had been extensively copied in metropolitan journals, and had passed into the swelling current of campaign literature. He did not enter the senate as an obscure or unknown person whose spurs were still to be won. The appreciation in which he was held was promptly manifested in a signal manner by making him chairman of the committee on the judiciary, the most important and responsible committee of the senate. In order to understand the significance of this spontaneous testimonial we must remember that committees of the senate are not appointed by the presiding officer of that body, but that they are chosen by a

¹An occurrence happening during the canvass created much amusement. A Whig candidate for the office of presidential elector, having heard one of Ashley's speeches, became converted, resigned his candidacy, and afterward voted the Democratic ticket; no doubt the only incident of the kind on record.

conference of committees selected for that purpose by the representatives of the opposing political parties in proportion to their numerical strength as shown by the senate roll. In the selection of the chairman of any important committee, length of previous service in the senate and consequent familiarity with its rules and traditions are naturally regarded as considerations of great weight. In this instance these were disregarded; hence the compliment to the new senator was the highest that could be conferred upon him; so high, indeed, that it has never been conferred on any other senator during his first senatorial term since the government was established. The compliment was the greater because the Democratic party, then in the zenith of its power, was represented in the senate by many men of extraordinary ability, having also the advantage of long experience in public affairs.

At the time of his entry into the senate, Chester Ashley was fifty-three years old. He was about six feet in height, and weighed about one hundred and eighty pounds. He was compactly built, and was apparently strong and vigorous. His eyes were gray, his features regular, his nose slightly aquiline. His complexion was florid, his hair, originally dark brown, was as white as snow. His countenance, when in repose, was grave and thoughtful, lighting up and becoming animated in conversation or debate. According to his contemporaries, he was a man of commanding appearance.

Soon after his entry into the senate Ashley made a speech in favor of the annexation of Texas, which had an immense circulation. It was a powerful argument, very carefully prepared, and was supposed to represent authoritatively the views entertained by the administration. This speech added much to the reputation that he had brought with him into the public arena, since the question discussed was of the most urgent interest; and it was read eagerly by all classes of citizens.

It would be impossible for me within the limited time at my command to follow Mr. Ashley through his senatorial career, nor does the matter now possess any lively interest, since the questions then under discussion have for the most part been long ago consigned to practical oblivion.

Ashley did not take any part in the heated and acrimonious

discussions in the senate that marked the history of the time. His semi-judicial position as chairman of the judiciary committee rendered such participation improper; moreover, he was not a man of irate temperament or extreme views. Many of the fiery and bitterly denunciatory speeches of the time were made by demagogues for purely selfish motives; others had their origin in spleen and personal malice. No one desired a civil war; but men of these types stirred the fires of sectional discord until the situation passed beyond their control.

There is one matter with which Ashley had to do that is so closely connected with the history of American jurisprudence that I cannot pass it by unnoticed. All over the continent of Europe from early times, the admiralty jurisdiction extended over the sea and over all inland navigable waters. The rule was not different in England; but as there were in Great Britain no internal navigable lakes or rivers, it became customary to say in England that the admiralty jurisdiction was limited to tide water; tide water being the only navigable water known to English commerce. Substantially the same conditions existed in New England.

The case of *The Thomas Jefferson* (10 Wheat., 428), decided by the supreme court of the United States in 1825, was a suit in admiralty brought for the wages of sailors earned on the Ohio and Mississippi Rivers. The court held that in this country the admiralty jurisdiction, as in England, was limited by the ebb and the flow of the tide; and hence that the admiralty court had no jurisdiction. The opinion was delivered by Mr. Justice Story. Nothing could more clearly exhibit the force of habit. As Mr. Justice Story, a New England man, had habitually seen it stated in English and New England books and precedents that tide water determined the jurisdiction, he accepted the statement as axiomatic, and made no further inquiry, thus mistaking a mere badge or symbol for the thing represented. Ashley perceived that this decision, founded on a misapprehension, was peculiarly unfortunate, since it would leave the admiralty jurisdiction thus withdrawn from the great lakes and rivers of our country to the conflicting jurisdiction of the state courts; thus inevitably leading to a total want of harmony, and to such a

state of confusion as would greatly impede the development of our commercial interests.

In order to get the supreme court to revise its decision, he introduced a bill in congress expressly extending the admiralty jurisdiction over all navigable lakes and rivers of the United States, and providing for trial by jury in admiralty cases. This act was passed and approved February 25, 1845.¹

As the jurisdiction of the federal courts is unalterably fixed by the federal constitution, he knew that the act might be held to be unconstitutional—though it was afterward claimed to be valid under the interstate commerce clause—but at any rate he desired to bring the question once more before the supreme court, with the prestige of an act of congress in favor of a different rule from that previously declared, in the hope that the court might recede from its former decision. He did not live to see the result of his experiment, for the question did not again come before the supreme court until 1851 in the celebrated case of the *Tennessee Chief*,² when the personnel of the court had wholly changed. The question was then presented in an action brought under the Ashley act in a court of admiralty for damages caused by a collision on Lake Ontario. On a reëxamination of the whole question, the court overruled the former decision, and held in effect that the Ashley act was in the main merely declaratory of what law had always been, and that that part of it providing for trial by jury in the admiralty courts was constitutional and valid.

On the expiration of his term in the senate, Mr. Ashley was reëlected without opposition, and was continued in his position as chairman of the judiciary committee. Six more years of usefulness seemed to be before him. He had always been strong and vigorous. He had never been ill; his natural strength seemed to be unabated; but unconsciously he had reached the closing hours of his career, and was nearing the

“Twilight and evening star,”

after which should come the dark, and the life beyond.

In May, 1874, I spent a night at the house of Albert Pike,

¹5 U. S. Stats. at Large, p. 726.

²12 How., 233.

in Alexandria, Virginia. During the course of the evening and some of the early hours of the morning we had much talk, during which he told me many things touching the early bar and the early courts of Arkansas. No one could be more interesting in conversation. As what he said concerning Chester Ashley coincided with the information that I had received from many other sources, I may give it here as well as my memory will permit:

"When I arrived in Little Rock in 1835, Ashley was universally conceded to be at the head of his profession in the State, though there were some strong men at the bar who were hardly inferior to him in learning and ability who kept him looking after his laurels. I cannot say that I was ever intimate with him. He was considerably older than I was; we belonged to opposing political parties, and party feeling ran very high in those days. However, he always treated me kindly. As a Henry Clay Whig of a pronounced type, I detested what in my set we called his Jeffersonian heresies aggravated by Jacksonian degeneration. Still, I think that I never saw the time that I could not do him justice; and I regretted his untimely death as a severe loss to the State, and to the country at large. He was a remarkable man of great distinctness and individuality of character. He had been a close student in his youth, and was well read up in history and literature. In addition to great strength of mind and uncommon versatility, he had other decided advantages over most men. His memory was almost infallible in its accuracy. He seemed never to forget a name or a face, and toward the close of his life his circle of acquaintance was enormous. Dates, names of cases and their contents, details of every kind seemed to be stereotyped in his mind. He was essentially a man of the spoken word. I do not think that he ever wrote anything but briefs and law and business papers, all of which he prepared with great skill. In the trial of the most intricate causes he rarely used pen or pencil. Always self-poised and self-possessed, he had constant control of all his resources in every emergency. He was such a close observer that nothing seemed to escape his attention. He had an iron constitution, and was a very hard worker; but as he transacted business with unusual accuracy and dispatch, he found time

for social enjoyment, and kept up a very general acquaintance with all kinds of people. He had a few friends whom he implicitly trusted, and toward whom he was perfectly loyal, besides a pretty numerous following of admirers. His domestic attachments were peculiarly strong. Although in his day the journey from Little Rock to the national capital was slow and arduous, yet when he went to Washington he was always accompanied by his family. His habits were regular and temperate, and he took good care of his health. He displayed much versatility and unwearied activity. As a financier his success was remarkable; everything that he touched seemed to turn to gold. He lived in very close touch with the world, and always knew what was going on around him. His business transactions were extensive, but he never allowed them to interfere with his professional duties.

"He was profoundly read in the law; and though very quick, alert and self-possessed, he never entered the court room without the most mature preparation. He had great skill in the examination of witnesses, and in the trial of causes. In the court room he was always courteous in a marked degree. He was a favorite with the courts because his demeanor was always deferential and respectful, and because he always kept absolute control over his temper, and never became angry or excited; never wasted the time of the court in trifles, or indulged in long and useless harangues. He was a hearty laugher, a good talker, genial in conversation, and most companionable. He had a keen sense of the amusing and the absurd. Whenever lawyers got together he was always the life of the party, and thus he was very popular both with the bar and the bench. He was a fluent speaker, and as a debater and dialectician I do not know that he had a superior. In his habits he was liberal and generous, and his integrity was unquestioned.

"But Ashley's real place was in the United States senate. His personal presence gave him the look of a senator. He was an extremely useful member of that body, devoting to the duties of his position all his talents and all his energy. As chairman of the judiciary committee, he was excessively overworked, so that he did not speak often in the senate; but when he did speak he was always listened to with marked respect and atten-

tion. He was also recognized as a safe adviser, so that no important step was taken by his political party without consulting him."

To this delineation I find it unnecessary to add anything.

In his early days in Edwardsville, Illinois, Ashley formed a friendship with Sidney Breese, afterward a judge of the supreme court of that state, a man of great uprightness and purity of character, recognized as one of the most distinguished judges of his time. Their friendship, long maintained by an active correspondence, had, as it were, a new consecration when in 1844 they met as senators representing their several states in Washington. Their mutual affection was such that they lived in the same building, so that they might enjoy the pleasure of constant intercourse.

In 1848 Ambrose H. Sevier, United States senator from Arkansas, resigned his seat to accept the position of minister to Mexico, and Solon Borland was elected to fill his unexpired term in the senate.

In April, 1848, Mr. Ashley presented the credentials of Mr. Borland to the senate, and the latter was admitted to his seat. A few minutes later Ashley became suddenly ill, and was removed to his rooms. At first it was thought that his disease—some kind of fever—would yield to treatment, but it suddenly took a turn for the worse, and he died on the 29th day of that month in the fifty-seventh year of his age, surrounded by all the members of his family. Both houses of congress at once adjourned.¹

The body lay in state in the senate chamber on the 2d of May, and then, followed by a large funeral concourse, was buried in the congressional burying ground. Later Senator Breese and Senator Borland delivered eulogies in the senate chamber on his life and public services. His body now rests in Mount Holly Cemetery at Little Rock, in close proximity to those of his wife and children, and surrounded by those of many of his friends and contemporaries to whom he was intimately known. We may linger there for awhile—and then—

“We give to each a tender thought, and pass
Out of the graveyard with its tangled grass.”

¹A few days before his last illness Mr. Ashley made a speech in the senate that was never printed, as he did not live to revise the report.

THE CONSTITUTION OF 1836.

By JESSE TURNER.¹

The effacing hand of time, slow moving, but inexorable, and its powerful coadjutor, the torch of war, more swift in its desolating conquest, coöperating with indifference and neglect, have sadly depleted the original sources of information from which this paper must be prepared. What survives is widely dispersed and difficult of access.²

It is my purpose, so far as the materials at hand, the considerations of space and my limited qualifications for such a difficult task will permit, to develop the subject under four principal heads.

I. I shall give an account of the origin and growth of the movement inaugurated in the Territory of Arkansas which culminated in the constitutional convention of 1836.

II. I shall set forth the proceedings of that convention, the fruit of which was the constitution of 1836.

¹Jesse Turner is a native of Van Buren and a lawyer by profession. He is the only son of the late Jesse Turner, once a member of the supreme bench, and of Rebecca Allen Turner (nee Allen). He was educated in the public and private schools of Van Buren, at the Kenmore High School, Virginia, and at the University of Virginia. He studied law under his father and was later associated with him in the practice of the profession.

Mr. Turner is a Democrat in politics. He served as mayor of Van Buren for a number of years, though he did not seek the office. He is president of the Crawford County Bank at Van Buren.—EDITOR.

²At the threshold I acknowledge the weighty obligation I am under to Hon. Josiah H. Shinn of Washington, D. C., for valuable aid. It would not have been possible for me to treat certain parts of the subject with any degree of thoroughness had I not availed myself of the fruits of his most zealous and intelligent investigations in the congressional library. All the extracts from the *Gazette* and the *Advocate*, as well as a number of those from the *Times*, which appear in the following pages, were selected and obtained for me by him.

I am also deeply grateful to Mrs. Myra McAlmont Vaughan and to Fay Hempstead, Esq., (to both of whom all students of the history of our State are much indebted) for placing at my disposal rare documents and newspaper files.

III. I shall relate the story of the struggle in the congress of the United States, which resulted in the acceptance of the constitution of 1836 and the admission of the Territory into the Union.

IV. I shall examine the text of the constitution of 1836, compare it with other political charters, and endeavor to fix its character and place in that product of a long evolution—the American Written, or Conventional Constitution.

I.

By the treaty concluded between the United States and France on April 30, 1803, under which the “Colony or Province of Louisiana” was ceded to our country, all the territory embraced within the present limits of the State of Arkansas passed to the United States. By the third article of the treaty it was provided that—

“The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and, in the meantime, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.”³

President Jefferson, in laying the treaty before congress, said:

“Whilst the property and sovereignty of the Mississippi and its waters secure an independent outlet for the produce of the western states, and an uncontrolled navigation through their whole course, free from collision with other powers and the dangers to our peace from that source, the fertility of the country, its climate and extent, promise in due season important aid to our treasury, an ample provision for our posterity, and a wide spread for the blessings of freedom and equal laws.”⁴

By act of congress approved March 26, 1804, erecting out of Louisiana the territories of Orleans and Louisiana, the present State of Arkansas constituted part of the “District of Louisiana.”⁵

³Revised Statutes Arkansas (1838) (McK, Ball & Roane), pp. 42-5; Revised Statutes Arkansas (1904) (Kirby), pp. 171-2.

⁴Third Annual Message, October 17, 1803; Messages and Papers of the Presidents (Richardson), Vol. I, pp. 357-62.

⁵U. S. Statutes at Large, Vol. II, pp. 283-9.

By act of March 3, 1805, it was provided the District of Louisiana should be organized under the name of the "Territory of Louisiana."⁶

By act of June 4, 1812, the name was changed to that of the territory of Missouri.⁷

On March 2, 1819, an act was approved which declared that:

"From and after the fourth day of July next, all that part of the territory of Missouri which lies south of a line beginning on the Mississippi River at thirty-six degrees north latitude, running thence west to the River Saint Francois, thence up the same to thirty-six degrees, thirty minutes north latitude; and thence west to the western territorial boundary line; shall, for the purposes of a territorial government, constitute a separate territory, and be called the Arkansaw Territory."⁸

The act provided for a temporary government consisting of three departments—the executive, the legislative and the judicial. Thus, July 4, 1819, is the natal day of Arkansas as a political society.⁹

During the following seventeen years various acts were passed relating to the boundaries and the government of the Territory. Meantime, its population had increased from 14,273 in 1820, of whom 12,579 were whites, to 30,388 in 1830, of whom 25,671 were whites. These were figures full of significance, adumbrating both the constitution of 1836 and the time when the infant Territory should become a sovereign state; for the story of the constitution of 1836 is indissolubly bound up with the story of the struggle of the Territory of Arkansas for statehood.

. Any fairly comprehensive treatment, therefore, of the subject of this paper involves an investigation of the origin and development of the movement for state government. Just when the aspiration that Arkansas might take her place as a great American commonwealth first stirred the imagination of the dreamer of dreams can never be known. This much, however, we do know; that, as early as 1831, the vision of statehood floated like a cloud suffused with the roseate hues of the dawn before

⁶*Ibid.*, pp. 331-332.

⁷*Id.*, pp. 743-747.

⁸U. S. Statutes at Large, Vol. III, pp. 493-6.

⁹It will be observed that the territory was christened "Arkansaw."

the prophetic eyes of Desha and Crittenden—a vision which neither of them lived to see realized.

In the campaign between Desha and Sevier for the election of a delegate to congress, Desha stated that when Arkansas had the population required by law, he would, as a citizen, advocate the propriety of her entering the Union of states as soon as she could form her constitution and obtain the assent of the federal government. He pointed out that the delegate in congress from the Territory could not act, even after the Territory possessed the requisite numbers, without "the expression of the will of a majority of the people made by a petition to congress directly or through their legislature."¹⁰

The statehood issue was also made the topic of several communications appearing in the number of the *Advocate* which contained Desha's circular. Sevier's views at that time are sufficiently set forth in his circular of April 11, 1831. He states that the Territory did not possess sufficient population to entitle it to admission into the Union; that, should immigration continue as it had done for the two or three years preceding, the Territory would shortly have it in its power, "to enjoy the benefits of such a government." Until then the agitation of this "excitable question" was premature. He adds that, even if the Territory possessed the requisite population, "it would be, in our present situation, a grave consideration whether we should accept state government or not." * * * Taxed highly and deeply in debt, I believe we should be pursuing our best interests by remaining as we are. * * * Our representation in our legislature is more numerous than that of many of the states, and as numerous as it would be if we were a state. Our legislatures have no restraint on their legislation. When we are out of debt, and when we have the population and the means to support a state government, I am as anxious as the most impatient to see this Territory become a state.'¹¹

Then comes a lull. There is no reference to statehood in the four-column circular of Robert Crittenden in the *Advocate*

¹⁰Ben Desha's circular, May 11, 1831.

¹¹Compare Crittenden's statement in the *Advocate* of July 18, 1834, where, by way of retrospect, he says: "In 1831, when we were in favor of state government, Mr. Sevier opposed it, and beat us on the issue."

of April 17, 1833, in which he announced himself a candidate for congress against Sevier, and in which he set forth fully his connection with Arkansas affairs from 1819. Nor does it seem that either Crittenden or Sevier alluded to the subject in their canvass.

The scene now shifts to Washington. During the first session of the twenty-third congress, in December, 1833, Mr. Sevier introduced a bill in the house directing a census of the inhabitants of the Territory of Arkansas. The bill was referred to the regular standing committee, which reported favorably during that session. Nor was this all. Sevier, with splendid decision, took another and a much longer step. What this step was, and why he took it at this time, we shall let him tell in his own words. On January 21, 1834, he wrote to the *Gazette*:

"You will perceive that, on yesterday, I introduced a resolution inquiring into the expediency of permitting the people of Arkansas to form a constitution and come into the Union upon an equal footing with the original states. I have done this for a variety of reasons. Michigan is now applying for admission, and I have every reason to believe that her application will be granted. Michigan, of course, will be a free state, and should she go into the Union as such, the happy balance of political power now existing in the senate will be destroyed, unless a slave state should go in with her. The delegate from Florida is not now in his place, but were he here, and were he to press Florida, it would probably exclude us, and, in that event, our admission, in all probability, would be deferred until Wisconsin should apply. When would this application be made? Not for a quarter of a century. Such a procrastination would not be willingly subscribed to by any of our fellow-citizens. Upon the whole, I think this not an unfavorable opportunity for our admission. At this time, also, we should be able to come in without trammels upon the subject of slavery. It may be said, however, that, in the admission of Missouri, the subject was finally settled by compromise. It is true that a compromise was made, but I beg leave to reply that no congress has a right to bind a succeeding congress upon the subject of slavery, or on any other subject, and the same body who made the compromise might rescind or disregard it.

"It is by no means impossible for political bodies to disregard compacts of compromise, if they have the power, however explicitly they may have been made. It should be observed that any bill upon this subject which congress may pass will not be binding upon us. * * *

"Having no memorial from our legislature upon the subject, and no petition from the great body of the people, I have taken upon myself this responsibility. The people cannot be injured by my application, inasmuch as their acceptance or refusal of a state government will depend entirely upon themselves."¹²

¹²*Gazette*, June 9, 1835.

A few days later Mr. Tipton introduced in the senate a bill to enable the people of Arkansas Territory to form a constitution preparatory to their admission into the Union. It was referred to a select committee upon a similar bill for the admission of Michigan. In due course it was called up, and, on motion of Mr. Ewing, it was, by a close vote, laid on the table. Here it remained for six weeks. Then, at an evening session of the senate, Mr. Tipton, in asking permission to take up the bill, said that his only object was that the people of the Territory might be authorized to have the census taken preparatory to their final admission; that he had been waited on by the delegates from the territories, and requested that the Arkansas and Michigan bills be acted on, and, as they were not represented in the senate, he was desirous of showing the people of the territories that he had not neglected their interests. Over the objections of Mr. Clayton, and by a very narrow margin, the bill was taken up, and, after it had been partly read, Mr. Webster moved that it be laid on the table. The motion was defeated by a single vote. Before the reading had been completed, the motion to lay on the table was renewed, and this time the enemies of the bill were successful by a vote of 17 to 14.¹³

The defeat of the measure is thus chronicled in the *Advocate*:

"Sevier's bill of 1833 was, at the fag end of the session, laid on the table. Only about thirty senators were present, and the close vote on the question shows that, at the next session, the bill will pass. Webster, Clay and Calhoun voted to lay the bill on the table"¹⁴

In the second session of the twenty-third congress Mr. Sevier called up the house bill, gave notice that he would move to amend it, and succeeded in having it made a special order for December 18, 1834. In a letter to the *Gazette* he stated that there were but three bills before it, and expressed confidence that it would pass at that session.¹⁵

"The best laid schemes o' mice and men
Gang aft a-gley."

¹³*Congressional Globe*, twenty-third congress, first session, pp. 133, 379, 473.

¹⁴*Advocate*, July 25, 1834.

¹⁵*Register of Debates*, twenty-third congress, second session, p. 778. *Gazette*, February 3, 1835.

Notwithstanding all these high hopes, the friends of statehood were doomed to temporary disappointment. The bill for the admission of the State failed—failed, so it was said, for want of time. But the fight was still on. Michigan and Arkansas had, in vain, supplicated at the outer gates for enabling acts. Michigan had now adopted a bold expedient. Her council had been called together by her governor and an act had been passed for the assembling of a convention to frame a constitution and to demand admission into the Union. The conjuncture was propitious for Arkansas to make the same high venture.

Sevier, vigilant, sagacious, not in the least oppressed by that bugbear of little minds—a fatal consistency—abandoned the dogma that an enabling act was a prerequisite to the attainment of the goal, and on March 31, 1835, announced his position in a strong and comprehensive argument reiterating and amplifying the views which he had expressed in his letter to the *Gazette* of the previous year. He affirmed that, although it was true that most of the important works of internal improvement were in progress of execution, and that, even if no appropriation for new works were obtained, their own means, aided by such grants as congress might bestow, would enable the State to accomplish all that the public interest might require, still, as a matter of dollars and cents, it would be the wisest policy not to seek statehood at that time.

But it was not a mere question of dollars and cents. There were other and more controlling considerations. There was, said he, “a battle to fight with fanaticism upon the subject of slavery.” Here he pointed to the petitions presented in congress urging the liberation of slaves in the District of Columbia and in the territories. He considered it the part of wisdom to resist restrictions while yet the power existed to do so, rather than “to jeopardize the principal part of your estates or find yourselves by a congressional legislation forced into exile in quest of new homes.” In the house, the slave-holding interest, he said, was in the minority. In the senate the parties were equally balanced. “Let Michigan get into the Union without us, and we are then completely at the mercy of both houses of congress. Michigan,” said he, “Michigan with whose fortunes circumstances have recently connected us, has taken a decisive

stand.'’ She was, on her own initiative, forming a constitution, “and, at the next session of congress, her delegate in the house of representatives, with the constitution of his State in one hand and the ordinance of 1787 in the other, will demand, as a matter of right, her admission into the confederacy upon an equal footing with the original states.

“Knowing the difficulties she has to encounter, she is imploring us to take a similar step and stand by her in her hour of trial. There is a degree of boldness and spirit in her position well calculated to inspire the admiration of all who take pleasure in seeing a magnanimous people striking for liberty and a free constitution. There is something magical in a name, something ennobling in the reflection of feeling, as we walk, that we are citizens of a free and independent state. We have a greater population than had either of four states when admitted to the Union. Our rights are secured to us by the third article of the treaty of April 30, 1803. They are secured to us by the constitution itself. Our ancestors tired of colonial vassalage, and so have we.”¹⁶

On the same day that Sevier’s declaration of independence with its trumpet-sounding final sentence went forth, Woodruff’s editorial appeared, in which he expressed regret that the bill for the admission of Arkansas had failed. It might be wisdom, he said, to wait until the territory had a population of 80,000 or 100,000, if it were not for one thing—delay would trammel the admission with restrictions as to slavery to which the people would never submit. “It was attempted in Missouri and made more excitement than nullification. Fanatics,” said he, “who call themselves abolitionists are numerous in the east and have agents and emissaries traveling to make proselytes.” Mr. Woodruff concluded by expressing the opinion that the governor should convene the legislature immediately and recommend to them the passage of a law authorizing the calling of a convention to form a constitution to be submitted to congress at the next session, and that the admission of Arkansas be demanded simultaneously with that of Michigan.¹⁷

The *Advocate* joined hands with the *Gazette* in favoring a

¹⁶*Gazette*, June 9, 1835.

¹⁷*Gazette*, March 31, 1835.

constitutional convention, and impatiently awaited the meeting of the legislature, Governor Fulton having declined to call it in extra session.¹⁸

The Times vacillated. In commenting on a communication from Washington County in which the correspondent had said that it seemed "our friend Woodruff was hot and heavy for a state government," and had inquired whether "you all are becoming deranged at the seat of government?" and had declared that "it will not go down in this quarter," Mr. Hunt, the young editor of the paper, replied: "We scarcely know what to say. * * * How he (Governor Fulton) and the advocates for state government will compromise the matter we are unable to say."

The statehood issue now became a burning one, and numerous public meetings were held in the various counties to consider it. One of the earliest of these was in Jackson County (April 26-28), at which a resolution was passed requesting Governor Fulton to call a special session of the legislature to provide for a convention. The resolves adopted here (as did a number of those subsequently adopted in many other counties) placed much stress on the importance of maintaining the balance of power between the slave-holding and the nonslave-holding states, and "the disposition in many of our northern and eastern brethren to interfere with and disturb us in the possession of our slaves" was viewed with "deep concern."

On June 13 a public meeting was held at Little Rock, presided over by Judge Samuel S. Hall, which endorsed statehood and a call for a convention. Absalom Fowler and Charles Caldwell advocated action, while Col. A. S. Walker opposed. On the vote Colonel Walker and Major Field stood alone. An address to the people was prepared and issued, signed by Samuel S. Hall, chairman, P. T. Crutchfield, De La F. Roysdon, Albert Pike, R. Childress, Chester Ashley and William E. Woodruff. The address is elaborate, spirited, and, in spite of its great exuberance of tone, highly persuasive. It commences with the statement:

"The causes which produced the struggle for American liberty and induced the patriots of '76 to throw off the British oppression can be

¹⁸*Advocate*, May 8, 1835.

distinguished by name only from those which should induce the citizens, the free and independent people of Arkansas, to claim the right of emerging from territorial darkness into the light of civil liberty and national independence. * * * Has the word liberty, which urged your ancestors to deeds of noble daring, lost its charm for you? Has it ceased to be the spell for the patriot to conjure with? Would it be nothing for you to be represented in the halls of congress? Have you no desire or ambition to have a voice in choosing the president and vice president of the United States? Would it be a small privilege that you should elect your rulers and your judges, instead of having appointed over you such overseers and task-masters as a distant master may see fit? Would it be worth nothing to form a consistent and just code of law and to regulate and purify the system of your courts? If men have fought to the death for less things than these, will we make no effort to gain and possess them?"

The importance of Arkansas being represented in the senate is emphasized. Suppose, proceeds the address, congress should see fit to give to the Indians of the west, Crawford and parts of Washington, Pope and Miller counties. Attention is called to the fact that, in the past, a country forty miles in breadth by two hundred in length was thus wrested from the people of the Territory.¹⁹

Are we not interested in the tariff? In Clay's land bill? "We possess," continues the address, "a rich country, but while we remain a territory we are looked upon with a distrustful eye. When we become a state, emigration will increase and for the first time since the discovery of America a boundary has been fixed beyond which the tide of emigration may not flow; for the Indian country west erects a barrier. Thus, no other asylum for the emigrant will be left except Arkansas."

The question of the probable population of the Territory is then considered, and it is insisted that it is sufficient to entitle the Territory to ask for admission into the Union.

The financial problem is next attacked.

"Our poverty," runs the address, "has ever been the dolorous burden of the song." The conclusion is reached that the Territory can bear up under the burden of statehood, and that it will never be richer under the existing system.

"But we are told that, if we become a state, we must bid farewell to the liberal expenditures of the general government for the improve-

¹⁹By the treaty of the United States with the Choctaws, January 20, 1825, and by the treaty of the United States with the Cherokees, May 6, 1828.

ment of our rivers and roads. This is like telling a young man of twenty-one that he had better stay with his father a while longer for the food and clothes he will give him. But this is not true."

Attention is then directed to the "immense bodies of Indians coming in upon our western border—all of them under the protection of the United States—and to Mexico on the south. Thus, garrisons must always be to the south and west of us, and these will call for national highways and waterways to be fostered by the national government."

The address concludes with this withering blast:

"Poor, indeed, is the plea of poverty, when liberty and man's dearest rights are at stake. Craven-hearted and unworthy American must he be who would be contented to remain a bondman and a hewer of wood to escape paying the paltry pittance of twice his present tax."²⁰

But the opponents of state government were not silent. Many communications appeared, from time to time, in the columns of the *Times* placing the opposition to a change of government on various grounds. Much was made of the expression in Sevier's circular to the effect that "the question comes upon us at an unfortunate period." This being so, why-not, it was answered, delay the move for a more propitious time?²¹

"Must the State of Arkansas," it was asked, "be like a sickly plant forced into unnatural growth by a kind of hothouse cultivation? Rather, let her take her stand among her sister states with the mature powers of an adult, not being at too tender an age weaned from the parent nurse."²²

Great emphasis was placed on the cost of the proposed new government and of the deplorable results which were likely to follow the drying up of the life-giving springs of federal bounty. The dithyrambic variations played by many of the advocates of state government on the theme of "colonial vassalage" offered too fair a mark for adverse criticism to be ignored.

"The good people," says the skeptical "Jefferson," "who form the great mass of the community, and who are quietly pursuing the different occupations common to a new and thriving country, must be struck with astonishment at the picture presented of their abject and intolerable con-

²⁰Among other mass meetings in which many prominent men participated, and where, almost invariably, statehood and immediate action were demanded, were: Pope County, June 27; Arkansas County, July 4; Independence County, July 6; St. Francis County, July 7, July 11; Crittenden County, July 14; Lawrence County, July 20; Washington County, August 10.

²¹"Arkansas," in *Times*, May 23.

²²"Peregrinus," *Times*, June 6.

dition, which they never before could have dreamed of. * * * The ridiculous outcry about colonial bondage, love of freedom, and the chivalrous call, at all hazards, to strike for independence is well understood to be only a gull for the ignorant.’’²³

Probably the ablest and most pungent arguments against state government are found in a series of communications appearing in the *Times* under the *nom de plume* of “Arkansas.” “Arkansas” deprecates the warmth of the controversy, saying that “facts lose their force and arguments cease to convince when they are accompanied by invective and alloyed with abuse.” Whereupon, with a war cry, “*aut Caesar, aut Nihil,*” he bursts into the midst of the fray and lets fly his “first shaft smack at the enemies’ captain.” Referring to the statement in Sevier’s circular that “we have a battle to fight with fanaticism on the subject of slavery,” he says:

“True; but who will stigmatize the enlightened and liberal delegations of the north as fanatics? * * * A few religious fanatics in the heat of misguided zeal made a recent effort to urge our northern brethren on to the commission of acts of injustice and injury against us. But, did they succeed? The democracy of the north stood up as one man and cried: ‘Down with the traitors to their country’ * * * and down they went. The Tappans, the Garrisons and their brutish herd of followers, mottled equally in color and crime, fell beneath the stroke. Their very houses were torn down, and they escaped by flight the punishment so much merited. * * * The ‘Missouri question’ can never be revived. * * * Conceive * * * the justice of the apprehensions of the slave-holders for the safety of their property, and how is the case affected by it? Of the whole white population, for one who has twenty slaves, we will find you twenty who have no slaves. The one, then, will be the sufferer by the abolition of slavery in the Territory, and to enable him to loll in ease and affluence and to save his own delicate hands from the rude contact of the vulgar plow, the twenty who earn their honest living by the sweat of the brow are called upon with the voice of authority assumed by wealth to receive the yoke. They must consent to a tenfold increase of tax for the support of a state government, because my lord is threatened with danger of desertion from his cotton field if we remain as we are.

“To this the nonslaveholders who compose, as will appear by the new census, an overwhelming majority of the population of the territory, cannot submit. They are willing to forego the advantage to *themselves* of the abolition of slavery, and to smother their dissent from the principle, as a matter of right, religion and ethics, but a greater sacrifice cannot, in justice, be expected. * * * Our slave population is to the white as one to five, and we are in a cold sweat at the idle fear of losing the little we have.

²³*Times*, September 19.

"The Territory of Michigan is held up to us as an example worthy of imitation. Her boldness and spirit applauded." "We are told," says "Arkansas," "that our present state is one of 'colonial vassalage.' * * * It is a reflection of degradation on the people of the Territory, and a charge of tyranny upon the government of the United States. * * * If we are actually under a 'colonial vassalage,' a declaration of our independence cannot be made too soon; nay, it ought to have been made years back. Our relations with the federal government have undergone no change of late. It surprises me, then, that our patriotic delegate should ever have advocated the present form of government, if he deemed it a 'vassalage.'

"Michigan," he proceeds, "is by peculiar circumstances rendered less dependent upon the aid and assistance of others than we are. Her population nearly doubles ours, and is much more wealthy, and this spread over an area less by one-third.

"Her territory is surrounded almost entirely by navigable waters, and, consequently, easy of access at all points. She has no streams to be deepened and freed from obstructions, no roads to be constructed over marshes and inundated lands, at an enormous expense. Her internal sources of wealth are unequal to those of which we can boast, but nature has placed them more within her reach."²⁴

Human nature is much the same in all ages, and the readers of this paper will not, therefore, be greatly surprised to learn that the merits of the issue were considerably obscured in some quarters by virulent attacks on the motives of some of the leading actors in the movement. There were allegations that the "move" had its origin in Washington City; that it was of a purely partisan nature to advance financial and political ends, and a bitter protest was registered against having, as was alleged, all officers "saddled upon us from one family * * * governed by a dynasty east of the Mississippi."²⁵

"The privilege," it was said, "of voting for some Jacksonian for next president" came entirely too high.²⁶ The people, it was confidently predicted, would not "suffer themselves to be bridled, saddled and mounted by the dandy jacks who expect a share of dishonestly acquired spoil."²⁷

Amid all this war of words, the statehood tide, day by day, mounted higher and higher. Governor Fulton, clutching the skirts of manifest destiny in a vain endeavor to stay the onward sweep of the movement, on August 4 issued a three-column mani-

²⁴*Times*, May 23, May 30, June 13.

²⁵*Americus Times*, May 9.

²⁶"St. Francis," *Times*, May 16.

²⁷*Times* editorial, June 13.

festo. In it he says that the framing of a constitution would tend to dissolve the government of the Territory, and that to pass the act demanded would be an act of usurpation and void, violating as well all precedents in similar cases, and that if he were to give his aid to such an unlawful proceeding he would consider himself "to be foresworn."

He declared, however, that he was not opposed to the admission of Arkansas at the earliest possible moment after she should have obtained the proper authority to form a state constitution, and he expressed his opinion that whenever Arkansas presented to congress a republican constitution made under the sanction and authority of the government itself, she would be admitted without the imposition of unjust or unreasonable restrictions.²⁸

The governor was answered by Pike, who affirmed that congress could authorize the Territory to form a constitution, or the Territory could form one on its own initiative, and that, if the latter alternative were adopted and the constitution so formed was republican, and if the Territory had the requisite number of inhabitants and agreed to the proper restrictions, then "the constitution of the United States and the treaty of cession entitle us to admission."

He insisted that it was the duty of the governor to have convened the legislature in special session. Had he done so, when the bill passed for a convention, he could have vetoed it, giving his reasons much more appropriately than in an address to the people. Had this been done, "the bill would have been passed by a majority of two-thirds and without the aidance or abetting of the governor," and Arkansas would already have been a state.²⁹

Meantime, the election for delegate in congress (to which

²⁸*Gazette*, August 4; *Times*, August 8.

²⁹*Advocate*, August 14. See, to same effect, editorial in *Gazette*, August 25. Also Governor Fulton's reply in *Gazette* September 1, and communications attacking the governor's position in the *Gazette* September 8 and October 6.

Sevier was returned without opposition) and the taking of the territorial census were both proceeding.³⁰

October 5, 1835, is memorable as marking the meeting of the last territorial legislature of Arkansas. Charles Caldwell of Pulaski County was chosen president, and Simon T. Sanders of Hempstead County secretary of the council. The house of representatives elected John Wilson of Clark County speaker, and L. B. Tully clerk.

On the same day Governor Fulton sent in his message, in which, after reciting that the census showed a sufficient population to entitle Arkansas to representation, he announced his position in the following words:

"This Territory, therefore, possessing the amount of population which congress has hitherto required for the erection of territories into states, there can be no doubt but that, upon the application of the representatives of the people, congress will freely grant to the people of Arkansas the requisite powers and authority to constitute them a sovereign and independent state."³¹

The *Gazette* erroneously interpreted this statement as an abandonment of Fulton's position that an enabling act was necessary.

On October 7, 1835, on motion of Mr. Ringgold of the council, a resolution was adopted referring that part of the gov-

³⁰The *Times* of August 22 gives the vote on state government, so far as heard from at that date. It is as follows: Independence, for 163, against 136; St. Francis, for 190, against 119; Jefferson, for 102, against 31; Pulaski, for 311, against 119; Pope, for 186, against 26; Hot Spring, for 52, against 21. The same paper in the issue of August 29 gives the following additional counties: Green, for 58, against 90; Crittenden, for 141, against 26; Monroe, for 29, against 13; Van Buren, for 61, against 62; Johnson, for 205, against 12. Total, for 1,518, against 655.

The editorial comment is: "We are informed that Clark, Pike, Conway, Chicot, Arkansas, Crawford and Lawrence counties have made no returns on the subject. We regret this, as an expression of public sentiment could have been had with so little trouble."

The census returns as found in the *Gazette* of August 25 were as follows:

Total population, 1830.....	30,388
Total population, 1833.....	40,660
Total population, 1835.....	51,800

³¹*Times*, October 10, 1835.

ernor's message pertaining to statehood to a joint committee, which, as finally constituted, consisted of fourteen members.³²

After considerable controversy in the joint committee over the basis of representation in the coming convention, a bill had been finally agreed on giving twenty-one members to the northern and western sections of the territory, and twenty-one to the southern and eastern sections, "although much weaker in point of numbers than the former."³³

On October 14 the committee, through its chairman, Absalom Fowler, submitted its report, and introduced the bill providing for the election of members to a convention to frame a constitution for the people of Arkansas preparatory to their admission as a state. The report is an exceptionally lucid, comprehensive and well-sustained argument, rising, on the whole, to the dignity of a weighty state paper. Despite its length, I should hesitate long to emasculate it with an epitomizing lancet. I shall, therefore, not very materially curtail the document of its proportions; and, so far as I shall use it, I shall set it out *ipsissimis verbis.*

"In the investigation of the subject," runs the report, "two prominent points presented themselves to your committee—the right and the expediency of immediate admission into the Union as a sovereign, free and independent state.

"As to the latter, although a branch of the subject upon which many of our most intelligent citizens differ, as motives of interest or patriotism, whether misguided or properly directed, prompt, your committee are of the opinion that, whether viewed as a matter of pecuniary loss or gain, or as one in which the natural feelings of self-respect and capability of self-government are more intimately blended, the case is not materially varied. The great and continuous influx of wealth and population, the recent unparalleled increase of the sales of public lands, as well as the accumulation and concentration within our borders of other fit and permanent subjects of taxation, the better prospect of establishing under a state government, a permanent system of revenue laws and other institutions calculated to advance the prosperity of the country, free from the influence, direct or indirect, of those higher powers, who now frequently have no immediate interest in the welfare of the people, and are, in no case, directly responsible to them—the legitimate source of all power—

³²The members appointed by the council were Messrs. Ringgold, Bean, Clark of Chicot, Moore, Williamson, Brown and Kearn. The members appointed by the house were Messrs. Fowler, Cummins, Mathers, Walker of Hempstead, Walker of Washington, Evans and Ellis.—*Times*, October 10, 19.

³³Fowler's circular in *Times*, December 7, 1835.

connected with other important subjects, are entitled to great weight and high consideration. In opposition to these, it might be urged that appropriations by the general government for the convenience and improvement of our country after we throw off the chrysalis and assume the character and powers of a state will cease to be made.

"But in the opinion of your committee, those bountiful donations and expenditures will not be materially affected by the change. Nearly all the subjects of expenditure from the United States treasury in Arkansas, upon examination, are found to be, in a military point of view and otherwise, such as the constituted authorities of the Union, by the settled rule of construction, would pronounce national highways and navigable streams, connecting points of defense important to the republic; and, under a state government, with a representation in congress, would be more likely increased than diminished.

"Further, the pacification and quiet of a people is one of the indispensable bases to the prosperity and happiness of their country. The restless spirit of men born free, who for a time, in order to carry into effect, in a becoming manner, the constitutional stipulations of their common country, have submitted to the curtailment of a portion of their inherent privileges, when awakened to a sense of their rights by their condition and number, and resolved to claim the stand to which they believe themselves entitled, according to the evidence of every age and country, will continue to agitate a question so vitally important to them until it meets with a final and satisfactory adjustment. * * *

"In relation to the right of Arkansas with her present population to admission into the Union, upon an equal footing with the original states, your committee, after a deliberate and calm investigation of the subject, are equally clear and satisfied with the propriety of their conclusion. Without resorting to the abstract and unchangeable principle, founded in nature, and indelibly incorporated in the American code, by our fathers in the war of Independence, that all men are born free and equal, and are, by nature, sovereign and entitled to self-government, they find ample guarantee in written stipulations for the right which the people of this Territory now claim.

"Then, without relinquishing the former, they are, for the present, willing to rely upon the latter, as furnishing a sufficient safeguard to the liberties of their constituents, while the congress of the United States retains its high character for justice and uniform respect for the rights of man.

"That it was the intention of the people of the original states, who created the federal constitution, to permit an increase in the number of states, is evident from a clause in the constitution itself, declaring that 'new states may be admitted by the congress of this Union;' and conclusively established by the admission of many 'new states' under that constitution.

"In addition to this general provision in the constitution, there is a special guarantee to this Territory, as constituting at that time a part of ancient Louisiana, found in the treaty (and treaties by the constitution are declared to be 'the supreme law of the land'), ceding that province of France to the United States, under the auspices of Mr. Jefferson, then president of the United States, and Napoleon Bonaparte, then first consul of the French republic. * * *

"Territorial governments, as connected with that of the United States, are necessarily in their nature, as also declared by the acts of congress organizing them, 'temporary,' and only designed to protect the liberty, property and lives of infant communities until they acquire sufficient confidence and numbers properly to avail themselves of their right to admission into the Union as states. This right, your committee believe, may be exercised by a territory situated as Arkansas is, and under the same stipulation on the part of the United States, whenever its population is equal to the ratio of representation in the congress of the Union. With that number of citizens—and Arkansas has more—she, in the opinion of your committee, has a clearly defined right to demand admission into the Union; and congress, as the agent of the people of the several states, is under a concurrent obligation to fulfill their constitutional and treaty stipulations, and in justice bound to grant admission whenever it is thus demanded. It is also true that, should the United States be unjust, they have the power to exclude us from the benefits of the federal constitution; but the exercise of arbitrary power, uncoupled with right, by a mighty people to crush the native and absolute rights, insisted on in a respectful and legitimate manner, of a younger and kindred community, 'not yet attained to the bone and gristle of manhood,' would present a spectacle of injustice not to be apprehended from a government whose faith has never been violated or pledged in vain. Your committee, after viewing every prominent aspect which the subject of admission seems to present, cannot but look upon the main point as clear; and disrobed of the involving mists which sophistry, at the first glance, seems to have thrown around it, as a matter of *right*, under the constitution and laws, on the part of the Territory; and as one of concurrent *obligation*, under the same, on the part of the United States; and as a matter of *interest*, according to the fundamental principles of American liberty, equally desirable and important to both. * * *

"If the builders of the constitution had seen the necessity of nurturing the 'new state' by a colonial code of laws, they would, in that instrument, most certainly have prescribed the basis or fundamental principles for such a system; but those sages well knew that colonial government, at best, was but ameliorated slavery, and, in respect to the rights of the citizens, refrained from prescribing any rule of action to the new community, leaving them wholly untrammeled to select their own time and manner of admission. To admit the principle, that a territory could not make the first proposition in the matter, even were the right to sovereignty in her people, and her right to admission doubted, would be an extension of the inability in communities to make contracts and stipulations for their security and for the improvement of their political condition, not heretofore known to exist.

"Even a slave has the right to stipulate with his master for his freedom, and to propose the terms upon which he wishes it granted. A community, then, possessing many acknowledged political rights and powers, would surely have the power and right to treat for more, without first imploring the higher power for an endowment of sovereignty to enable her to make a valid contract. * * *

"The true construction of the entire subject," concludes the committee, "is resolved into this, that the first proposition for admission into

the Union may be properly made either by Arkansas or the United States; that congress may pass a law declaring her willingness that Arkansas may form a constitution and become a state, which, when Arkansas assents to, the matter is complete; or, that Arkansas may, of her own free will, form a constitution and apply for admission, which, when approved by congress, becomes of equal validity; and, that in either case, Arkansas becomes legally and constitutionally one of the United States of America."

A minority report was presented by Dr. Walker of Hempstead County which concurred "in the opinions of his excellency, the governor, so far as they are expressed in his message to the legislature, and explained in the publication heretofore laid before the public over the signature of his excellency." It alleged that "the present action of this legislature on the subject of the admission of Arkansas into the Union, further than by memorial to congress, is *unnecessary, impolitic and illegal.*" It was insisted that the inhabitants of the Territory already enjoyed greater privileges and immunities than the citizens of many of the states. The argument that, should Michigan be admitted previous to Arkansas, the balance between the slaveholding and the nonslave-holding states would be destroyed, was answered by pointing to the Missouri compromise. Much emphasis was placed on financial considerations. "Our fiscal concerns are in a ruinous situation, and our treasury is insolvent though our taxes are high, yea, higher than in almost any portion of the Union."

A gloomy picture was drawn of roads "going rapidly to decay," and of the inability of the citizens of the Territory "to defend themselves from the aggression of their enemies." "Surrounded as we are by numerous, powerful and uncivilized tribes of savages with an unorganized and unarmed militia, the minority are of opinion (although, they hasten to add, they had 'the most exalted opinion of the chivalry and bravery of the hardy pioneers of Arkansas') that our frontier would be in an exposed and dangerous situation were the president to withdraw the national troops now established on our borders (and which might be expected) were the measure adopted." The minority report further insisted that there was "want of authority on the part of this legislature to act in the manner proposed. * * * 'Tis true that the constitution of the United States says 'that new states may be admitted into the Union,' but

your minority would ask if this justified what might be called a forcible entry?" It was contended that, as congress has the power to designate the boundaries of every new state, the course recommended by the majority report was repugnant to that power.

Lastly, it was insisted that the Territory had not the necessary population. It was true that, according to the census just taken, the Territory contained nearly 48,000 souls; but, continued the report, "if we strike off from this aggregate that portion of the population which lies south of Red River, and which is evidently included in Texas, our population will be reduced to a fraction below that which would entitle us to representation." It was conceded that the government had already extended her jurisdiction over this country, but "it is supposed by all parties that, when the line is run, the whole, or, at least, a large portion, of this territory will be taken from Arkansas." Having thus summoned up "Gorgons and Hydras and Chimaeras dire," the minority of the committee concluded with the resolution "that it is unnecessary, impolitic and inexpedient to legislate on the subject of a state government at this time."³⁴

The majority report was speedily adopted in the house by a vote of Yeas 29, Nays 2. (Shaw and Walker of Hempstead.)

When the bill came up for action, the house entered on an earnest and, at times, angry debate. For the revelation of the play and interplay of the currents of faction which ran so turbulently beneath the placid surface of the impersonal legislative journal, we are indebted to the circular of Absalom Fowler announcing his candidacy for a seat in the convention from Pulaski County, and to articles in the contemporaneous issues of the Little Rock papers. The first attack on the convention bill was made by Mr. Walker of Hempstead, who moved to strike out the apportionment, and, in lieu thereof, insert that every county should have the same number of delegates as it then sent to both houses of the legislature. In support of his amendment, Mr. Walker, "with much zeal and eloquence, urged the rights of the south to have her slaves represented in the

³⁴Both reports may be found in the *Times* of October 19, 1835.

convention, and to fix in the ratio of representation in the state legislature three-fifths of the slave population," the pith of his argument being that, if it were not for the slaves in the Territory, Arkansas would not have the requisite population to entitle her to admission into the Union. This doctrine "was contended for out of doors by many other members. Among these were Clark of Chicot, Lee, Taylor, Buzzard and others."

Mr. Fowler, "with these ominous signs," as he said, "of an intention to fix upon the freemen of Arkansas a representation of slaves, felt bound to oppose Mr. Walker's amendment, and to sustain the original bill." He therefore replied to Mr. Walker of Hempstead. Mr. Walker of Washington also strenuously opposed the amendment. The addresses of Messrs. Fowler and Walker of Washington were said to have been "warm and impassioned," and their arguments presented with "zeal and ability."³⁵

The amendment carried by a rather close vote, but, before a vote was reached on the main proposition, the bill was re-committed to a select committee consisting of the two Walkers, Cummins, Mathers and Logan. This committee reported a bill with an amendment fixing the apportionment at one delegate for each 500 inhabitants, with a proviso that each county should have at least one vote. This report was finally amended by way of compromise agreed upon by all parties. Under this compromise the representation was increased to fifty-two members, divided in such a way that the north and west had twenty-six and the south and east, including Pulaski, twenty-six, "thus leaving the two grand divisions equally balanced, and the people free to determine at the polls whether they will have slave representation, or a district representation, which is, in substance, the same thing, or a representation of freemen."³⁶

The bill, as thus amended, passed the house by a vote of 27 to 6, and the council by a vote of 25 to 4.³⁷

The law-making power, having been thus delivered, by a kind of Caesarian operation, of the convention bill—an operation under which, in this case, if the child lived the mother

³⁵*Advocate*, October 30.

³⁶Fowler's circular.

³⁷*Times*, October 19, 26, November 2, 1835.

must die—the bill went to the governor. Long before the territorial legislature convened he had communicated with Hon. John Forsyth, secretary of state of the United States, enclosing his address to the people in the preceding August, and requesting an opinion on the constitutional questions involved. Mr. Forsyth had transmitted the address to the attorney general of the United States, Benjamin F. Butler, who had written an opinion to the effect that the territorial legislature was but a creature of congress, and had no right to pass a law creating a convention to frame a constitution. All such proceedings, said the attorney general, would be null and void. He held, however, that the people did have a right to peaceably assemble and petition, and that congress had the right to accept any constitution so framed when presented, inasmuch as its power over the whole question was plenary and unlimited.

The governor returned the bill to the house of representatives accompanied by a communication stating that he did not believe the legislature had power to pass the act, and that he had no power to sanction it. He therefore withheld his signature. The bill having been retained in the governor's possession three days without action, it thereupon became a law.³⁸

³⁸*Times*, October 19, 26, November 2, 9, 1835.

The act appears in the territorial acts of 1835, at pages 96-99. It enacts that it shall be lawful for the qualified voters of each county in the Territory to assemble at the several precincts in each township in the several counties to elect representatives to form a constitution, in convention, for the people of the Territory preparatory to their admission into the Union as one of the United States of America.

An apportionment of the fifty-two representatives among the various counties of the State is made. It is further provided that the election of said representatives shall be holden by the sheriffs of the several counties on the second Monday in December (1835) on due notice, and the elections in all respects shall be conducted as for the election of sheriffs, clerks and other officers on said day. That the members thus elected are authorized to meet in "the town of Little Rock" on the first Monday in January (1836), and, after being duly sworn to support the constitution of the United States, and "the best interests of the whole people of Arkansas" shall then determine by a majority of the whole number elected whether or not it be expedient, at that time, to form a constitution and state government for the people within the Territory; and that, if it be determined to be expedient, the convention may then proceed to form a constitution and state government, provided the same shall be republican and not repugnant to the constitution of the United States.

That, if the convention form a constitution and state government,

Tucked away in its ample folds, the act contained vast possibilities for mischief. The *Times*, while the bill was still pending, had said with premature complacency that the apportionment was "as it should be, and we hail the passage of the bill with pleasure."³⁹

It early developed, however, that the compromise reached in the legislature over the basis of representation was but an armed truce, and that the controversy was destined to be again bitterly fought out on the floor of the convention.

The *Times* soon grasped the significance of passing events. It alleged it was with a view of affording "the southern and eastern gentlemen" a covert to back out of that the *Gazette* and *Advocate* had made an effort to change the openly avowed principle of negro representation to the indefinable substitute of district representation.

"To talk," said the editor, "of a district representation in a country where the freemen are equally dispersed over the whole surface of the territory with a view of throwing the balance of power to any particular spot, is, in our opinion, as great an outrage upon the rights of freemen as any arbitrary principle which could be fastened upon them, except, indeed, the original proposition of slave or property representation.
* * * The complaisant editor (of the *Advocate*), to screen his friends, now talks of *district* representation; and the whole burden of slave representation is thrown upon the shoulders of Mr. Walker of Hempstead, who was the declared enemy of state government throughout."

Harping on the same string, the *Times* in a subsequent issue

the convention shall, as soon as may be thereafter, cause a copy of said constitution to be transmitted to congress for its approbation; which, when approved of by congress and Arkansas admitted into the Union according to the principles of the federal constitution, shall be the constitution and supreme law of the State of Arkansas.

It is further provided that the convention shall be the judge of the qualification and election of its members, shall make its own officers, etc., shall have power to preserve order, etc., and that all the necessary expenses of the convention, including a per diem of \$2.00 to the members, and \$2.00 mileage for every twenty-five miles' travel in going to and returning from the convention shall be paid out of the territorial treasury.

³⁹*Times*, October 26, 1835.

warns the citizens of "old Pulaski and Hot Spring" to consider well before they give their vote for delegates to the convention.

"Is there not," it inquires, "something ominous in the fact that those who espouse the doctrines of the south *dare not* discuss the question? At least one of the papers of this city is known to be in favor of this doctrine, yet it is as silent as death. * * * Let them (*the Gazette* and *Advocate*) come out and take sides either for or against *free, white, male representation*—the only true republican representation. * * * Let the people * * * ask their candidates * * * are you in favor of a republican constitution and a representation upon the basis of freemen? * * * Pause and reflect before the yoke of slave, or district, representation is fastened upon your necks."⁴⁰

The *Advocate* blenched not. With high defiance, it proclaimed that "the senate should be elected according to the extent of the country. Senatorial districts should be formed by equal extents of country, and remain unchanged forever." "We have always been," continued Pike, "opposed to the ultra-democratic principles with which so many are enraptured. We have often declared in these columns that we believed the government of the United States could not exist without the senate as that senate is formed and exists today."⁴¹

Archibald Yell, whose life blood was destined to ebb away on the field of Buena Vista, wrote that he was gratified to learn that the *Times* would advocate "the republican principle as contended for by the north upon the basis of representation." "That," said he, "will be the all-absorbing question in the convention, the decision of which, should it be in favor of slave representation, will create a split incurable between the two great divisions of the country; and discord and sectional feelings will continue for years to come. The freemen of Arkansas will not tamely submit to such a doctrine. * * * We had better remain under a territorial vassalage than be sold to the south, and be controlled by our brethren who were instrumental in placing the yokes on our necks. All we ask in the north and west is a republican constitution and a representation upon the basis of freemen." Another correspondent arraigned the "south"—a section which, he alleged, evinced "a foreboding of fear from what they call 'the oppression of the north.' " He

⁴⁰*Times*, November 2, 23, 1835.

⁴¹*Advocate*, December 18, 1835.

predicted that many of the rich counties in the south and east would have fewer voters in them five years hence; that the opulent cotton planters would crowd out the small farmers, that the cotton lands would soon be owned by nonresidents, and that the rotten borough system of England would soon be fastened on the body politic.⁴²

Who was "Senex?"

Whoever he was, he seems to have taken exception to a circular which David Walker had addressed to his constituents—the people of Washington County. The sturdy champion of the north and west turned savagely on his anonymous assailant and proceeded to hand him down, like a fly preserved in amber, to future generations.

"The style and language of Senex's publication," fulminated Mr. Walker, "not less than its slanderous falsehoods, point so obviously to the obscure and contemptible source from whence it sprung, that I could not be induced to notice it, but from the evident intent of the writer under the pretext of answering what I had said, to whitewash doctrines which he is unwilling should be presented to the public in their naked deformity. * * *

"Who this officious scribbler is may be matter of speculation. * * * Perhaps he is one of those from the north or west who abandoned the interests of their constituents.

"I repeat fearlessly, that slave representation was contended for in the legislature; that it was contended that districts of country should have representation independent of their population; that two of the northern or western members, by voting with the south, did give to them a majority; that the northern or western members, with scarcely an exception, did determine to vote against the whole measure rather than sanction such principles; and that there are, to this day, 2,200 white males of the north and west unrepresented in the apportionment. * * *

"The people would, in one common assembly, have had the right to have appeared in their own proper persons as well as by representatives, and have formed that convention. Suppose it had been the case. * * * Would slaves, or districts, or dollars have voted there, or entitled their owners to vote? * * * If, then, the people send their representatives to do this for them, will slaves, or districts, or dollars have voice to give to country; or the holders of slaves, or money, an additional voice in electing these representatives? Assuredly not. Then, how can such a doctrine be sustained? * * *

"Suppose a line to be drawn from northeast to southwest across the Territory. There are, on the northwest side of that line, 2,200 more white male inhabitants than on the southeast side. What is it that gentlemen would count against these freemen to entitle the southeast to as

⁴²*Times*, November 30.

strong a representation as the northwest would have? Is it slaves, country laid off into districts, or property, or what is it? I deny that anything can. Upon principle, all the slaves in America cannot weigh against one freeman's vote, nor can all the districts or wealth of the world.

"Is it forgotten that, in a government like ours, the poorest man in society raises as strong an arm in defense of the liberty of his country as the wealthiest nabob in the land, and is entitled to as much weight in making the constitution and laws that govern him, and pass upon the life and liberty of himself and family as he who is a lord of wealth? Are the principles of liberty which cost our fathers their blood and treasure so easily forgotten? Is their example, is the example of our mother states, worthy of consideration? If they are, if we respect their wisdom and experience, look to the constitutions of the several states. I challenge an example in all America, except the State of Georgia (and her constitution was formed at a time when the State was ruled by an aristocracy) where such a course has been sanctioned. * * *

"I am charged with having said on the floor of the house of representatives that the slave property, or district representation, was anti-republican. I did say so, and I repeat it. It is anti-republican, and strikes at the liberties of the people. I knew at the time that it would bring upon me the displeasure of some. I care not. Anonymous scribblers may endeavor to defeat my election by slander and misrepresentations, but they can never change my course." * * *

Then this parting bolt is shot:

"That he (Senex) is *small game*, no one doubts who has seen the track he makes. I shall, therefore, not trouble myself in future by noticing him. Perhaps he may, if let alone, write himself a name. He certainly needs one."⁴³

As we read of this passionate controversy—a controversy involving the drawing of "a geographical line coinciding with a marked principle, moral and political"—there emerges the figure of the white Hercules, and to that figure, like the tunic tinged with the blood of Nessus, clings the figure of the black man. How strangely reminiscent it all is of the truces of 1787 and of 1819-1820; and how portentous it is of the evil days of 1861!

The springs of action leading to this acrimonious clash in the Territory of Arkansas are, however, not far to seek. They had their origin, just as, long before, the springs of action leading to the very similar controversies in the continental congress, and in the Philadelphia convention of 1787, had *their* origins—not in deep-seated hatred of slavery, but in the thirst for

⁴³*Times*, November 30. See also communications of "A. B. C." and "Old Pulaski," *Times*, November 15, November 30.

political aggrandizement. There were very few men, indeed, in the Arkansas of that day who were seriously opposed to slavery as an existing institution. There were a vast number, however, who resisted the imposition of any rule of apportionment which, in its practical operation, was bound to lead to a vote in one section of the State counting for more than a vote in another section of the State. Under the provisions of the act, the election of delegates to the convention was to take place in the various counties on the second Monday in December, 1835, and the convention was to meet at Little Rock on the first Monday in January, 1836. The campaign, therefore, was on at once, and the delegates were chosen pursuant to the requirements of the statute.

Meantime, rumors of the impending change reached and disturbed Washington.

"The position we had assumed," says Sevier, "in regard to our state government was not correctly understood at this place. The impression had extended widely that Arkansas intended to form a state government, and kick into nonentity the territorial authorities without the approbation of congress.

"I have informed the president, and such others as I had an opportunity to address, that we contemplated no such thing; that rebellion or treason against the federal government never entered into the mind of a single individual in Arkansas. That we intended to form a constitution, present it to congress for its approbation, and, until it should be accepted by congress, that we expected to remain as we are in allegiance and obedience to territorial authorities. This seems satisfactory to everybody.

"Send us a republican constitution as soon as possible. Let it be here by the middle of February, and Arkansas and Michigan will be received together into the Union without difficulty."

II.

We are now about to venture on a journey of four weeks through a barren waste with a grateful little oasis only here and there. Sparse as are the available facts for the preparation of this paper elsewhere, they become still more meagre here; and when we fairly enter on this dreary tract they all but desert us.

The convention had no official reporter. On its roll of membership we read the name of no James Madison. If there survives a single private letter written by any member of the

⁴⁴Sevier's letter of January 1, 1836, in *Advocate*.

convention relating to its inner workings, the existence of that letter is unknown to me; nor, so far as I am aware, has any address made on the floor of the assembly been preserved. The newspaper files covering that most important period are, strange as it may seem, almost dumb in regard to the proceedings of the convention. We have, therefore, little authentic evidence of the motives and the reasons which actuated members in supporting or in opposing this or that proposition. All is conjecture. The journal, authoritative and valuable as it is, has its obvious limitations. It is a soulless thing. As transmitted to us, it represents only the desiccated remains of the acts and doings of the convention.

To reconstruct from the material at my command a vital and attractive story of the convention days, would be almost as difficult a feat as that essayed by the professor in the grand academy of Legado, who strove through eight long years to extract sunbeams out of cucumbers.

At the stroke of 12 on Monday, January 4, 1836, the convention met at the Baptist meeting house in Little Rock. In the assembly were many of the foremost characters of the Territory. All who gathered there have long since passed away, leaving surviving them the potent influence of their works. As beneficiaries of this splendid inheritance we, and all the generations of Arkansans yet to be, should know and tenderly cherish the story of the lives of the framers of our first constitution.

Alas! "The iniquity of oblivion blindly scattereth her poppy, and deals with the memory of men without distinction to merit of perpetuity. * * * Who knows whether the best of men be known? Or whether there be not more remarkable persons forgot than any that stand remembered in the known account of time? * * * Oblivion is not to be hired; the greater part must be content to be as though they had not been; to be found in the register of God, not in the register of man."

And so, it has come to pass that, even to us who stand on the threshold of the third generation from the men of '36, their fame is already fast fading into a dim tradition; while, to those who shall come after us, the very names of these men will become, unless soon rescued by some "special cunning hand," but the shadows of names.

A quorum of the members being present, on motion of Mr. McCamy, Mr. Bean was called to the chair. The members present then came forward, produced their credentials, were qualified and took their seats.⁴⁵

The convention then proceeded to the election of a president. Mr. Scott nominated Mr. Bates, Mr. Drew nominated Mr. Ringgold and Mr. Conway nominated Mr. Wilson. On the second ballot (Mr. Bates having withdrawn his name) Mr. Wilson received twenty-eight votes and Mr. Ringgold twenty-two. Mr. Wilson was accordingly declared elected president of the convention, and was conducted to the chair. Charles P. Bertrand was elected secretary over John Hutt, and, after a close and

⁴⁵From Pulaski, White and Saline came William Cummins, Absalom Fowler and John McLain; from Hot Spring, James S. Conway; from Jefferson, Sam C. Roane; from Pike, Elijah Kelly; from Hempstead, Grandison D. Royston and James H. Walker; from Lafayette, Josiah N. Wilson; from Miller, Travis G. Wright; from Union, Andrew J. May; from Crittenden, J. D. Calvert; from St. Francis, William Strong and Caleb S. Manly; from Phillips, Henry L. Biscoe and George W. Ferebee; from Arkansas, Bushrod W. Lee; from Monroe, Thomas J. Lacy; from Jackson, John Robinson; from Arkansas and Jefferson, Terence Farrelly; from Izard and Carroll, John Adams; from Chicot, John Clark and Anthony H. Davies; from Randolph and Lawrence, Robert Smith, Thomas S. Drew, David W. Lowe and Henry Slavens; from Independence, John Ringgold and Townsend Dickinson; from Izard, Charles R. Saunders; from Carroll, John F. King; from Washington, David Walker, Mark Bean, Abraham Whinnery, William McK. Ball, James Boon and Robert McCamy; from Crawford, James Woodson Bates, John Drennen and Richard C. S. Brown; from Scott, Gilbert Marshall; from Pope, Thomas Murray, Jr.; from Johnson, Lorenzo N. Clarke; from Johnson and Pope, Andrew Scott; from Van Buren, Walker W. Trimble; from Conway, Nimrod Menefee; from Sevier, Joseph W. McKean; from Clark, John Wilson.

The following day Wright W. Elliott, the member from Crittenden County, and G. L. Martin, the member from Greene County, took their seats. On a subsequent day the committee on elections, to which had been referred the petition of William D. Ferguson contesting the election of Wright W. Elliott, reported in favor of Elliott, the sitting member. At the same time the same committee to which had been referred the petition of John L. Lafferty contesting the election of Walker W. Trimble from Van Buren County, reported in favor of Lafferty. Both reports were adopted. The seat of Trimble was accordingly vacated, and Mr. Lafferty qualified. Subsequently Richard Ellis, the member from Sevier and Miller, resigned, and on January 21 the credentials of his successor, George Halbrook, were presented, and Mr. Halbrook, having qualified, took his seat as a member of the convention.

spirited contest, Albert Pike was elected printer for the convention over William E. Woodruff.

The act for the election of members to the convention having provided that the convention should first determine, by a majority of the whole number elected, whether it was expedient at that time to form a constitution and state government for the people within the Territory, that question was accordingly decided at the threshold in the affirmative, the sole vote in the negative being that of Mr. Walker of Hempstead.

During the early days of the convention there were appointed committees on election; on the government of the house; to provide a suitable house for the accommodation of the convention; on the executive; on the judiciary; on revenue; on legislative; on miscellaneous subjects; on a declaration of rights; on boundaries; on an ordinance or compact; on the militia; on schedule to the constitution; on banking.

As the convention drew near its close, a committee on style to arrange, article and section the various reports as they were engrossed for the final action of the convention, and a committee to draft an address to the congress of the United States to accompany the constitution, were appointed.⁴⁶

⁴⁶Following is the membership of the respective committees:

On the Executive—Messrs. Conway, Roane, Whinnery, Ball, Murray, Smith and Walker of Hempstead.

On the Judiciary—Messrs. Scott, Royston, Dickinson, Adams, Fowler, Biscoe, Marshall, McCamy and Drew.

On the Legislative—Messrs. Bates, Lacy, McKean, Bean, Clark of Chicot, Ringgold, Farrelly, Lafferty, Saunders, King and Cummins.

On Revenue—Messrs. Davies, McLain, Walker of Washington, Robinson, Calvert, Strong, Clarke of Johnson, May and Wilson of Lafayette.

On Boundaries—Messrs. Brown, Boon, Drennen, Wright, Strong, Kelly and Menefee.

To Draft a Bill of Rights—Messrs. Walker of Washington, Lee, Ferebee, Lowe, Martin, Slavens and Royston.

On Miscellaneous Subjects—Messrs. Manly, McCamy, Elliott, Davies, Bean, May and Martin.

On Ordinance or Compact—Messrs. Ball, Roane, Kelly, Biscoe and Brown.

To Draft a Schedule to the Constitution—Messrs. Marshall, Walker of Hempstead, Lacy, Dickinson, Biscoe, McCamy, McLain, Wilson of Lafayette and Drew.

On the Militia—Messrs. Fowler, McKean, Clark of Chicot, Ringgold and Whinnery.

On Banking—Messrs. Murray, Davies, Roane, Biscoe and McCamy. Committee on Style to arrange article and section the various reports.

The select committee to draft rules for the government of the convention reported twenty-two rules, all of which were adopted.

The committee appointed to provide a suitable house for the accommodation of the convention reported that they could find no building "that affords so many facilities and comforts as the Presbyterian Church, which has been tendered to your committee at \$100.00 in territorial scrip." It was thereupon resolved "that the proposals of the trustees of the Presbyterian Church be accepted."⁴⁷

A resolution, introduced by Mr. Fowler, providing that the convention be opened with prayer every morning, and that the Rev. James W. Moore, William W. Stevenson and such other respectable ministers of the gospel who might be in or visit Little Rock be invited to attend regularly for that purpose during its session, was rejected.

Here, again, history repeated itself. Who, that ever read them, can forget the impressive remarks of Dr. Franklin in the federal convention of 1787 in support of a similar motion —a motion which met a like fate.

"I have lived, sir," said he, "a long time, and the longer I live, the more convincing proofs I see of this truth: that *God governs in the affairs of men*; and if a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without His aid? We have been assured, sir, in the Sacred Writings, that 'except the Lord build the house, they labor in vain that build it.' I firmly believe this, and I also believe that, without His concurring aid, we shall succeed in this political building no better than the builders of Babel. We shall be divided by our little partial, local interests; our projects will be confounded, and we, ourselves, shall become a reproach and byword down to future ages. And, what is worse, man kind may hereafter, from this unfor-

as they were engrossed—Messrs. Walker of Hempstead, Farrelly and Dickinson.

Committee to Draft an Address to the Congress of the United States—
Messrs. Roane, Ball, Conway, Cummins and Biscoe.

⁴⁷I am thus precise because some uncertainty seems to have hitherto existed as to the chamber in which the convention sat. The journal shows that the convention met in the Baptist meeting house and that it deliberated there for the first three days. The remaining sittings were in the Presbyterian Church.

In this respect the famous Virginia convention of 1788, which ratified the federal constitution, presents a curious analogue. It, too, convened in one building and continued and completed its sittings in another—a circumstance which has been overlooked by some writers.

tunate instance, despair of establishing governments by human wisdom and leave it to chance, war and conquest.'⁴⁸

On January 8 Mr. Conway, from the committee on the executive, presented a comprehensive report which was intended to provide in detail for the due exercise of the executive functions of the proposed government.⁴⁹

On a subsequent day the report was amended so as to provide for the offices of auditor and treasurer to be elected by the general assembly. Amendments proposed changing the term of the governor from four to two years; confining the legislative business, in special sessions, to the purposes for which the body had been convened; requiring three-fifths of the membership of the legislature, then (by way of substitute) two-thirds thereof, to pass a bill over the governor's veto, were all rejected.

On January 26 the report, but slightly modified, was agreed

⁴⁸V. Elliott, 253-4. In the federal convention the issue was evaded, and Dr. Franklin's motion never came to a vote, but he has recorded that "the convention, except three or four persons, thought prayers unnecessary."

"It will not, I hope, be considered that I am wandering too far afield if, in this connection, I point to a pictured page in 'The Heart of Midlothian'—Jeanie has just 'knelt and prayed with fervent sincerity that God would please to direct her what course to follow in her arduous and distressing situation.' Sir Walter Scott comments thus on this act of his heroine: 'Without entering into an abstruse point of divinity, one thing is plain—namely, that the person who lays open his doubts and distresses in prayer, with feeling and sincerity, must necessarily, in the act of doing so, purify his mind from the dross of worldly passions and interests, and bring it into that state when the resolutions adopted are likely to be selected rather from a sense of duty than from any inferior motive.'" (Chapter XIII.)

⁴⁹The plan under which it is my endeavor to develop the subject of this paper makes it necessary that a somewhat full synopsis of the various provisions of the constitution as framed be given in Part IV *post*. The constitution in its final form consists simply of the various reports, with such amendments thereto as these reports received in their respective passages through the convention. The distribution, by the committee on style, of the matter contained in the various amended reports accords, except in comparatively rare instances, with the arrangement and language of these amended reports. It follows from these considerations that the epitome in Part IV, taken in connection with the various amendments which will be duly noted in the present part, presents the substance of the original report with sufficient precision to satisfy the requirements of the student. To avoid unnecessary repetition, which would be irksome to the general reader, no attempt, therefore, will be made here to set out a minute abstract of the contents of the longer reports.

to, and nearly all its subject-matter, with but trifling verbal changes, appears as Article V of the constitution.⁵⁰

On January 9 the committee on judiciary, by Mr. Scott, its chairman, presented an elaborate report providing for the creation and exercise of the judicial power. This committee also made a special report responsive to a resolution of the convention inquiring into the expediency of abolishing imprisonment for debt. The committee stated that they deemed it inexpedient for the convention, in forming a fundamental law, either wholly to abolish imprisonment for debt or to leave the subject entirely open for future action. Their recommendation was that the person of a debtor, unless where there is a strong presumption of fraud, should neither be imprisoned nor continued in prison after delivering up his estate for the benefit of his creditors in such manner as may be prescribed by law.⁵¹

The *Advocate*, in referring to the report, criticized the short tenure of office for the judges. "We would," said the editor, "infinitely prefer to see them elected to serve during good behavior; if not, they should serve ten years, and the circuit judges six at least."⁵² On subsequent days the report was considered and various amendments were proposed, some of which were accepted and some rejected. We can make only passing mention of the more significant ones. Mr. Lacy offered an amendment which increased the tenure of office of the judges of the supreme court from six to twelve years. The amendment was adopted by 28 yeas to 22 nays.

On this action Albert Pike commented:

"On Tuesday last, the judiciary report came up and Judge Lacy moved to amend it by changing the term for supreme judges from six to twelve years. He supported the amendment in a speech of great ability, in which sound political doctrines were combined with a bold and fervid eloquence of language."⁵³

On a later day, on motion of Mr. Royston, the convention reversed its action by a vote of 29 to 21 and reduced the tenure of the judges from twelve to eight years.

Pike thus vigorously animadverts on the Royston amendment:

⁵⁰Journal, pp. 42, 43, 44, 45, 54, 63.

⁵¹Incorporated in the constitution as section 11 in article VII.

⁵²Pike, in the issue of January 15, 1836.

⁵³Advocate, January 22, 1836.

"The judiciary report has been again amended, reducing the terms of services of the judges of the supreme court to eight years. We are sorry for it. We will never cease to lift our voice against it; and our feeble efforts shall never be remitted to place the judiciary on a basis not to be shaken by legislative favoritism or revenge or by popular fickleness."⁵⁴

On motion of Mr. Farrelly an important amendment was carried, creating a county court and providing for a presiding judge thereof with probate jurisdiction. A proposed amendment prohibiting the passage of any law increasing the compensation of the judges during the time for which they were elected was defeated. On this the vote stood 15 yeas, 33 nays.⁵⁵

An amendment proposed by Mr. Royston, providing that attorneys for the State should be elected by the qualified voters of the respective circuits, was defeated. Yeas 20, nays 29.

Mr. Fowler, after a second attempt, was finally successful in obtaining an amendment authorizing the general assembly, when they deemed it expedient, to establish courts of chancery. On January 27 the report, with the various amendments, was adopted, and its contents are found appropriately distributed in the constitution.⁵⁶

On January 9 the committee on boundaries, through its chairman, Mr. Brown, made a report. Subsequently a preamble offered by Mr. Fowler was accepted in lieu of that proposed by the committee. Several amendments were from time to time offered, only to be rejected, and finally, on January 23, the report was adopted and its contents, including the Fowler preamble, were incorporated in the constitution under the appropriate head.⁵⁷

The committee on revenue, through its chairman, Mr. Davies, reported on January 9. The report designated the manner in which the public revenue should be raised, imposed various limitations on its exercise, and indicated the subjects of taxation. Proposed amendments seeking to exempt from taxation

⁵⁴*Advertiser*, January 29, 1836.

⁵⁵The curious reader may consult the debates in the Philadelphia convention, where the same question was considered and the same conclusion reached as in the Little Rock convention. (See V. Elliott, 156, 330, 482. See also *Federalist*, No. 79.)

⁵⁶Journal, pp. 42, 43, 44, 45, 48, 49, 63, 64, 65.

⁵⁷Journal, pp. 42, 45, 47, 48, 53.

chattels not exceeding in value \$200.00, and again not exceeding \$100.00 were defeated, and on January 16 the report, unamended, was agreed to, and the language thereof may be found incorporated in the constitution as Article VII in four sections under the title "Revenue."⁵⁸

On January 11 Mr. Walker of Washington, of the committee appointed to draft a declaration of rights, laid before the convention the report in twenty-four sections. It contained an enumeration of the primordial rights of the citizen to liberty of person and security of property. The report was considered in committee of the whole and some amendments were reported. What the exact nature of these amendments was the records do not disclose, but a comparison of the report with Article II of the constitution leads to the conclusion that the changes were very slight—made, doubtless, by the committee on style. In section 13 of the report a vigorous phrase is eliminated: "The true design of all punishments being to reform, not to exterminate." While pending, Pike, referring to the report, wrote: "Above all, infinitely above all, we admire that clause in the bill of rights which provides that the rights, privileges and capacities of no man shall be enlarged or diminished on account of his religion."⁵⁹

On January 27 the report as amended was taken up, and after having been read, was agreed to, and in due course its contents were transferred to the appropriate article of the constitution.⁶⁰

On January 14 Mr. Ball, from the committee to draft an ordinance or compact, made a report which provided that certain specific propositions in behalf of and by the authority of the people of Arkansas be submitted to the congress of the United States, which, when assented to by congress, should be binding on the State of Arkansas; and that the delegate in congress from Arkansas should be empowered to make or assent to such other propositions or variations of the propositions made, as the interest of the State might require, which, when approved by the general assembly, should be obligatory, and all stipu-

⁵⁸Journal, pp. 42, 44, 47.

⁵⁹Advocate, January 15, 1836.

⁶⁰Journal, pp. 42, 47, 61.

lations entered into by the general assembly with the United States should be considered as articles of compact between the United States and Arkansas. Sundry amendments were proposed and adopted, the general tenor of which was to enlarge the already exorbitant demands on the national government for donations of the public domain. It really appears as if it were the set purpose of the convention to turn "the common dust of servile opportunity to gold." No wonder Sevier, when he learned the contents of the proposed compact, pronounced that "the pruning knife with a heavy hand will have to be used, or it will not go through."

As the convention drew toward its close (January 28) the proposed ordinance with amendments was adopted. It was destined, as Sevier had prognosticated, to be very materially modified by the congressional supplementary enabling act for Arkansas of June 23, 1836.⁶¹

On January 12 Mr. Manly, from the committee on miscellaneous subjects, reported. At the same time Mr. Davies from the same committee, made a counter-report. Both reports were recommitted. A few days later the report was again presented to the convention in three articles. The first article covered a variety of topics in twenty-two sections. The second article was devoted to the subject of education and the third article to that of slavery.

On following days the majority report and the minority report were under discussion. Many amendments were offered and a number of the sections of the report were modified or stricken out entirely. Several sections, the subject-matter of which was covered by other reports, were for that reason eliminated. In addition, clauses were stricken out which directed the general assembly to pass such laws as they might deem necessary to suppress "the evil practice of duelling," which rendered ministers of the gospel ineligible to the office of governor or to a seat in either branch of the general assembly; which provided that in all elections by the general assembly the members thereof should be required to vote *vive voce* and the vote to be entered on the journal; which made it the duty of the general assembly to regulate by law the cases in which

⁶¹Journal, pp. 44, 49, 50, 65, 66.

deductions should be made from the salaries of public officers for neglect of duty; which prohibited the general assembly from passing any act of incorporation unless with the assent of at least two-thirds of the general assembly; which required the secretary of the state, treasurer and auditor to reside and keep their offices at the seat of government; which made it the duty of the general assembly to pass suitable laws for arbitrating controversies; which made it obligatory on the general assembly to form a penal code; which required that all emancipated slaves should be removed beyond the limits of the State in a certain short time; and that such emancipation should only continue during the residence of the slave beyond the limits of the State.⁶²

A clause which declared that any person who should maliciously dismember or deprive a slave of life should suffer such punishment as would be inflicted in case the like offense had been committed on a free white person, and on like proof, except in case of insurrection of such slave, was stricken out. On its face this action of the convention would seem, to those who read in the twentieth century, harsh and sinister, especially in view of the fact that the constitution of Alabama (1819) and that of Georgia (1798) contained an almost identical provision. The internal evidences, however, are strong that the convention was, on the whole, animated by a humane spirit on the subject of slavery.⁶³

Ineffectual attempts were made to strike out clauses which prohibited lotteries, and which rendered any person who denied

⁶²I so interpret the action of the convention relative to the motion of Mr. Walker of Washington touching emancipated slaves, solely from the internal evidence available. The exact language of the journal is: "A portion of the sixth, and the whole of the seventh and eighth, and a part of ninth line, first section, was stricken out."

It is obvious, on inspection of the report, that the "first section" referred to is the first section under the head "Slavery—3;" and it is equally obvious from a comparison of this first section as reported, with the final form it took in the constitution as section one under the title "Emancipation of Slaves," that the words stricken out are those paraphrased by me in the text.

⁶³See e. g. article IV, section 25 of the constitution as adopted. The amendment to the report by which hampering restrictions on emancipated slaves were removed, to which attention has already been called, is also suggestive in its connection.

the being of God incompetent to hold office, or to be allowed his oath in any court. A motion to eliminate the clause which extended the disability to those who denied the existence of a future state of rewards and punishments was more successful.

Finally, after a number of rather extensive blood lettings, the report as amended was on January 28 adopted and its subject-matter duly distributed into the text of the constitution.⁶⁴

On January 16 Mr. Murray, from the committee on banking, presented a report, which provided that the general assembly might incorporate one state bank with such amount of capital as might be deemed necessary, and with such number of branches as might be required for the public convenience, which should become the repository of the funds belonging to or under the control of the State, and should be required to loan them out throughout the State and in each county in proportion to representation. The general assembly was further empowered to incorporate one other banking institution calculated to aid and promote the great agricultural interests of the country, and it was further provided that the faith and credit of the State might be pledged to raise the funds necessary to carry into operation the two banks, provided such security be given by the individual stockholders as would guarantee the State against loss or injury. During the progress of the report through the convention amendments were offered designed to limit the number of banks, including branches, to be established, but they were voted down.

An amendment was presented by Mr. Farrelly which proposed to vest the general assembly with power, whenever it deemed expedient or useful, to charter institutions with banking privileges, but declaring that no such institutions should ever be established in the State unless the stockholders were made individually, as well as collectively, responsible for all debts of such corporation. The amendment was rejected. Unfortunately, the yeas and nays were not taken. A similar fate was met by the amendment of Mr. Fowler, which proposed to supersede the original provision by a clause giving the general assembly power merely "from time to time to establish such banking institutions as the interests of the country may require." On

⁶⁴Journal, pp. 43, 46, 50-53, 64, 65.

January 27 the bank report came up for final action. Mr. Walker of Hempstead moved that it be agreed to, upon which Mr. Fowler called for the yeas and nays. The vote was: Yeas 29, nays 20.⁶⁵ Thus was begun a doleful chapter in the history of the State.

On January 19 the extremely important legislative committee was heard from through its chairman, James Woodson Bates, who made a report in thirty-seven sections. At the same time Mr. Ringgold from the same committee made a counter-report growing out of diverse views on the proper basis of representation in the general assembly. They furnished material for most earnest debates—debates which ranged through a number of the remaining days of the convention. Amendments of the report were made changing the qualifications for the exercise of the elective franchise from that of mere inhabitancy to that of citizenship, and reducing the required period of residence from one year to six months; changing the time of the meeting of the general assembly from the first Monday in December to the first Monday in November; making county judges eligible to a seat in the general assembly; and removing the ineligibility of clergymen to seats in the general assembly; fixing the minimum area of counties at 900 square miles and the minimum population at not less than would entitle the county to a member in the legislature. Amendments proposed declaring that general elections should be by ballot until otherwise directed, and making postmasters ineligible to seats in the general assembly, were defeated.

A motion followed to adjourn. On the call of the yeas and nays it was overwhelmingly defeated. Then came an ominous pause. It was ended by Mr. Walker of Washington, who moved to strike out the thirty-first section in the majority report, which provided that the senate should consist of not

⁶⁵Yeas: Messrs. Adams, Ball, Biscoe, Brown, Calvert, Clark of Chicot, Clarke of Johnson, Conway, Cummins, Davies, Dickenson, Drew, Elliott, Farrelly, Ferebee, Halbrook, Kelly, Lafferty, Lee, Marshall, McKean, Menefee, Murray, Scott, Strong, Walker of Hempstead, Wilson of Lafayette, Wright and Mr. President.

Nays: Messrs. Bean, Boon, Drennen, Fowler, King, Lowe, Manly, Martin, May, McCamy, McLain, Ringgold, Roane, Robinson, Royston, Saunders, Slavens, Smith, Walker of Washington and Whinnery. Journal, pp. 46, 49, 62.

less than 19 nor more than 33 members, for the election of whom the State should be divided into seven districts.⁶⁶

Thus the fight was on between those who advocated an apportionment based entirely on the number of free white males and those who favored an apportionment based, not ostensibly, but in reality, on a mongrel conglomerate of whites and blacks in rather indefinite proportions, all under the euphuistic phrase, "district representation." In its last analysis, the answer to the question "What weight shall the slave population have in the representative system of the coming State?" gives the clue by which the reader may thread his way through all the parliamentary labyrinth which follows.

Mr. Walker finally withdrew his motion, whereupon Mr. Ringgold moved to strike out sections of the majority report which provided for district representation in the senate, and in lieu thereof substitute the minority report which repudiated the district representative system, and declared specifically that there should be one senator for each district, and that the districts should be so formed as to contain as near as might be an equal number of free white male inhabitants.

The motion was carried.⁶⁷

That the vote was weighted with deep significance was demonstrated by the motion of Mr. Farrelly, which immediately followed the announcement of the adoption of the amendment. His motion was that the convention adjourn *sine die*. This

⁶⁶The journal has it that the motion went to the *thirty-second* section, which provided that the general assembly should cause an enumeration of the inhabitants of the State to be made in 1840 and every four years thereafter, and, at the first session after such enumeration, should apportion the numbers of senators among the several districts according to the number of free white male inhabitants.

I think it improbable, in the highest degree, that Mr. Walker sought to strike that section out. The critical student will not fail to discover a number of inaccuracies in the journal relating to the notation of those sections in the legislative report commencing with 29 and ending with 37.

⁶⁷Yea: Messrs. Adams, Ball, Bean, Boon, Brown, Clarke of Johnson, Dickenson, Drennen, Drew, Fowler, King, Lafferty, Lowe, Marshall, Martin, McCamy, Menefee, Murray, Ringgold, Robinson, Saunders, Scott, Slavens, Smith, Walker of Washington and Whinnery—26.

Nays: Messrs. Biscoe, Calvert, Clark of Chicot, Conway, Cummins, Davies, Elliott, Farrelly, Ferebee, Halbrook, Kelly, Lacy, Lee, Manly, May, McKean, McLain, Roane, Royston, Strong, Walker of Hempstead, Wilson of Lafayette, Wright and Mr. President—24.

move, however, was decisively defeated, and an unavailing effort having been made to refer the reports to a select committee, the vote on the Ringgold amendment was then reconsidered. An amendment in lieu of the Ringgold amendment was then offered by Mr. Drew, which provided that the senators should be apportioned among the several districts according to the number of free white male inhabitants therein, taking for the senatorial basis 1,500 free white males, and that the representatives should be apportioned among the several counties according to the number of free white male inhabitants therein, taking the number of 500 free white males as a ratio.

Mr. Farrelly struck at the free white male inhabitants ratio of the senate by an appropriately worded amendment on which the convention stood equally divided in a full house; James Woodson Bates, who was too ill to attend the session of the body, alone not voting. The situation was now, in the highest degree, critical. Mr. Fowler sought a way out by renewing his motion to refer the report, together with the amendments, to a select committee. This was agreed to, and Messrs. Fowler, Clark of Chicot, Clarke of Johnson, McKean and Drew were appointed as members of the committee.

Pending a report from the select committee, an effort was made by Mr. Murray to commit the convention to an explicit declaration that the convention, in forming the constitution, would recognize no other basis of representation than the free white male citizens of the country. On motion of Mr. Walker of Hempstead, the proposed amendment was laid on the table.⁶⁸

This vote was highly significant. It indicated that many of the advocates of the free white male basis of representation and their adversaries were drawing together on a common ground.

⁶⁸The vote by yeas and nays was as follows:

Yea: Messrs. Adams, Biseoe, Brown, Calvert, Clark of Chicot, Clarke of Johnson, Conway, Cummins, Davies, Drennen, Drew, Elliott, Farrelly, Ferebee, Halbrook, Kelly, Laey, Lee, Lowe, Manly, Marshall, May, McKean, McLain, Ringgold, Roane, Royston, Scott, Slavens, Smith, Strong, Walker of Hempstead, Wilson of Lafayette, Whinnery, Wright and Mr. President—36.

Nay: Messrs. Ball, Bean, Boon, Dickenson, Fowler, King, Lafferty, Martin, McCamy, Menefee, Murray, Robinson, Saunders and Walker of Washington—14.

Following the vote, Mr. Fowler from the select committee presented its report, which provided that the State should from time to time be divided into convenient districts; to be called senatorial districts, in such manner that the senate shall be based upon the free white male inhabitants of the State, each senator representing an equal number, as nearly as practicable. That, until the first enumeration, a provisional arrangement of districts should be made under which the various counties in the State should be distributed among sixteen districts, none of which should contain more than one senator except Washington County, which composed one district, and was entitled to two senators.

That an enumeration should be taken under the direction of the legislature on January 1, 1838, and at the end of every four years thereafter, and that, based on such enumeration, the senatorial districts should be so arranged as that each district should contain an equal number of free white male inhabitants, with a proviso that Washington County, as long as its population would justify, might elect more than one senator.

That the ratio of representation in the senate should be fifteen hundred free white male inhabitants to each senator, until the senate should amount to twenty-five in number, and that then they should be equally apportioned upon the same basis throughout the State in such ratio as the increased number of the free white male inhabitants might require until the population of the State amounted to 500,000 souls.

That the senate should never consist of less than seventeen nor more than thirty-three members.

That the house of representatives should consist of not less than fifty nor more than one hundred representatives, apportioned among the several counties in the State according to the number of free white male inhabitants, taking five hundred as the ratio, until the number of representatives amounted to seventy-five, and when they amounted to seventy-five they should not be further increased until the population of the State amounted to 500,000 souls—with a proviso that each county then organized should always be entitled to at least one representative.

That, until the first enumeration, fifty-four representatives

should be apportioned among the thirty-four existing counties, as therein specifically set forth; and that at the first session of the legislature after the return of every enumeration the representatives should be equally divided and reapportioned among the several counties according to the number of free, white males in each county.

Before the vote was taken on the report a resolution was submitted by Mr. Murray that two members of the convention wait upon James Woodson Bates, who was unable to attend from indisposition, and receive his vote upon the proposition before the body.

Mr. Walker of Hempstead moved that the resolution be laid on the table. On this the vote was: Yeas 21, nays 29.

The question was then taken on agreeing to the report of the select committee.

On the question of agreeing to the report of the select committee the vote was: Yeas 28, nays 22.⁶⁹

Thus the most irritating and perplexing question that at any time engaged the attention of the convention was dismissed from further consideration, and the language of the report was transferred to its appropriate place in the constitution. Adjournment immediately thereafter marked the close of the most momentous day in the life of the convention.

Like the apportionment in the territorial legislature convention act, the apportionment in the constitution represented, as Pike wrote, "A compromise between the friends of district representation and those opposed to it." Ostensibly, the basis of representation was, as explicitly stated, a free white male basis, but in reality there was a substantial concession made to the southern and eastern counties, so that a vote on one side of an arbitrary line drawn across the State still counted for more in the legislative halls than the same vote would have

⁶⁹The vote in detail was Yeas: Messrs. Biscoe, Calvert, Clark of Chicot, Clarke of Johnson, Conway, Cummins, Davies, Drew, Elliott, Farrelly, Ferebee, Fowler, Halbrook, Kelly, Lacy, Lee, Manly, Marshall, May, Mc-Kean, McLain, Roane, Royston, Strong, Walker of Hempstead, Wilson of Lafayette, Wright and Mr. President.

Nays: Messrs. Adams, Ball, Bean, Boon, Brown, Dickinson, Drennen, King, Lafferty, Lowe, Martin, McCamy, Menefee, Murray, Ringgold, Robinson, Saunders, Scott, Slavens, Smith, Walker of Washington and Whinery.

counted on the other side of the line. The student of the debates in the congress of the Confederation and in the Philadelphia convention of 1787, which finally settled on a representative apportionment based on the whole number of free persons, together with "three-fifths of all other persons" (save Indians not taxed), may in this connection find much interesting food for reflection. Relieved of the African incubus, the business of the convention from this time forward was dispatched expeditiously and without apparent effort. It seemed as though through all the few remaining days the good genius of the convention was joyfully singing:

"Now my task is smoothly done,
I can fly, or I can run."

On January 27 Mr. Fowler, from the committee on the militia, presented a report which provided that the militia of the State should be divided into convenient divisions, brigades, regiments and companies with officers of corresponding rank to command them, conforming, as nearly as practicable, to the general regulations of the United States army. The report was immediately agreed to without change, and is found *verbatim* in article V of the constitution under the title of "Militia."⁷⁰

On January 29 Mr. Marshall, from the committee to draft a schedule to the constitution, made a report which provided for the exigencies arising out of the approaching transition from territorial to state government. Among other provisions were these: That the city of Little Rock should be, and remain, the seat of government until otherwise provided by law; that the elections should be held on the first Monday of the following August for the various state and county offices, and for members of the legislature; and that the first general assembly should be holden on the second Monday of the following September.

In the early days of the convention efforts had been made to commit the convention, first, to a provision looking to locating the seat of government at Little Rock, and second, to locating the seat of government "at some convenient point on the Mississippi." The attempt to fix in the organic law the permanent seat of government at Little Rock was now again renewed, but

⁷⁰Journal, p. 61.

the proposition commanded only five votes, three of which were furnished by the delegation from Pulaski.

The proposed schedule was then agreed to, and the subject-matter thereof was transferred with only a trivial change or two to the constitution, where it appears under the title "Schedule."

Mr. Roane, from the committee to draft an address to congress, made a report, in which it was stated that the "people of Arkansas, animated by a desire for the enjoyment of independence and self-government, have, by an expression of their will approximating to unanimity, elected representatives to meet in convention with full power to make a constitution and system of state government for Arkansas. The accompanying constitution is the result of their deliberations." Expressing entire confidence that the action of the convention would "meet a cordial and liberal response from the congress of the United States," it was asked that "Arkansas may be admitted on an equal footing with the original states in the Union at as early a period as practicable." The report was agreed to. A resolution that two copies of the constitution, one on parchment and one on paper, one to be transmitted to congress, the other to be "laid up in the archives of the State," was adopted.

The convention then engaged in a keen contest over the election of a messenger. Mr. Bates, who evidently still continued indisposed, was permitted to cast his ballot by proxy. The nominees were Dr. J. H. Cocke, C. F. M. Noland, R. C. S. Brown, Barnett Williams, Elias Rector, Robertson Childress and, so runs the record, "the U. S. mail." R. C. S. Brown led for five ballots. On the sixth he was overtaken by C. F. M. ("Fent") Noland, who was elected on the seventh ballot.

Then the convention rested from its labors until 7 p. m. Nothing was accomplished at the night session.

On Saturday, January 30, resolutions were passed providing that 5,000 copies of the constitution and 500 copies of the journal of the convention be printed, and that these copies be circulated among the several counties according to the relative population in each county.

Where are now these copies of yesteryear? I question whether the fingers of two hands will not more than suffice to

number those which remain. The rest, like the sibylline leaves, are scattered to the four winds of heaven, and their dust, mayhap, is mingled with the dust of the framers.

The constitution was then read and adopted, the yeas and nays on the adoption being called for, only four voted in the negative—Messrs. Ball, Boon, McCamy and Roane.

Resolutions were agreed to directing that an authenticated abstract of the late census of the territory be procured by the secretary and transmitted with the constitution to the delegate in congress.

The president of the convention was instructed to address a note by the bearer of the constitution to the secretary of state of the United States to accompany the constitution, and the delegates from Pulaski County, together with any other members of the convention who might remain in Little Rock, were requested to superintend the copying of the constitution and attaching the signatures thereto.

The customary thanks of the convention were extended to the president and secretary, and then the presiding officer, addressing the house, expressed the hope that the fruits of their labors might “redound to the liberty, tranquillity and permanent welfare of our constituents and to posterity.”

He concluded by bidding the members farewell; and the convention then, on motion of Mr. Drennen, adjourned *sine die* after having been in session about four weeks.⁷¹

The constitution, after having been engrossed, was signed by all the delegates who had participated in framing it, and was published as an extra of the *Gazette* on February 4, 1836, and in its regular edition. It may also be found in the first issue of the *Constitutional Journal* of Helena, March 8, 1836, and in the issue of the *Times* of February 8, 1836.⁷²

While the convention was yet in session, Pike had charac-

⁷¹*Journal*, pp. 51, 52.

⁷²As we have seen, John L. Lafferty successfully contested the election of Walter W. Trimble, the sitting member from Van Buren County (*Journal*, p. 6), and George Halbrook, member-elect from Sevier and Miller in place of Richard Ellis, resigned, appeared and was sworn in January 21 (*Journal*, p. 35), and his name appears as one of the signers of the instrument. The signers are fifty-one in number. Thus the convention lacked one of being full. Mississippi County, which was entitled to one member, does not appear to have been represented.

terized the various reports as bearing the impress of high talents and correct views of government, and had predicted that the constitution would be inferior to none in the Union. Shortly after the adjournment, by way of summary he wrote: "We congratulate the country upon the happy termination of the deliberations of the convention. The convention has done honor to itself and to Arkansas."⁷³

These encomiums were, on the whole, just. The document was clear and symmetrical. It embodied, in general, sound principles, and it was sufficiently comprehensive to meet nearly all the practical requirements of its day. It did not, however, escape great faults. Humanly speaking, it could not well have been otherwise. The provision for the creation of the banks constituted a grievous error, and most grievously did the State suffer for it. The bank question had been, of course, already agitated in the territory of Arkansas.

The *Times*, in November, 1835, had reported that the bill to charter the Union Bank of Arkansas with a capital of \$2,000,000 had very recently passed the legislative council by almost a unanimous vote, but that in the house a motion to lay the bill on the table until January 1, 1836, had carried by a vote of 23 to 9.

The editor expressed regret that the bill could not have been amended so as to be acceptable to the house. "We are certain," said he, "that a bank based upon proper principles would be of great usefulness to the people of this territory. The enterprising citizens of Arkansas would, by the establishment of a bank like the one proposed, or one with a charter similar to it, have had placed within their reach facilities to engage in and accomplish many works of enterprise which are now entirely denied to them."⁷⁴

That period might not inaptly be called the bank mania era. "To make a bank," said Niles, "is the great panacea for every ill that can befall the people of the United States, and yet it adds not one cent to the capital of the community." We are told that in certain sections of the country eager applicants who came together to subscribe to the stock of new banks de-

⁷³*Advocate*, February 5, 1836.

⁷⁴*Times*, November 2, 1835.

generated into mere mobs; that a quite prevalent notion existed that a bank was a convenient and efficient new way to pay the old debts of the stockholders, and that when a great fire occurred in New York in 1835, it was seriously proposed to spawn a bank, then and there, as the most suitable mode of relieving the sufferers. The report of the committee on banking in the constitutional convention came at the psychological moment, and, despite energetic protests from some of the most influential men in and out of the convention, it was soon a part of the fundamental law.

The rearing of the fair fabric of the infant commonwealth on a foundation, the cornerstone of which was human bondage, led to far more widespread, enduring and graver consequences, the end of which is not yet. To him who believes there is a divinity which shapes our ends it seems almost inexplicable that the portentous problem of negro slavery should ever have been proposed for solution to the men of 1836.

In 1784 Thomas Jefferson had presented his report in the congress of the Confederation on the western territory. That report contained a clause which declared that, after 1800, there should be neither slavery nor involuntary servitude in the region which embraced not only the northwestern territory, but also the territory out of which was subsequently carved the states of Alabama, Mississippi, Tennessee and Kentucky. "On the question whether the provision should stand, there were," says Jefferson, "ten states present; six voted unanimously for it, three against it, and one was divided; and, seven votes being requisite to decide the proposition affirmatively, it was lost. The voice of a single individual of the state which was divided, or of one of those states which were of the negative, would have prevented this abominable crime from spreading itself over the country. Thus we see the fate of millions unborn hanging on the tongue of one man, and heaven was silent in that awful moment." Had Alabama, Mississippi, Tennessee and Kentucky come in as free states, many an important page of history would have told a different story.

Fifteen years before our first constitutional convention met, Jefferson had said that the public mind would not bear the idea of gradual emancipation. Then, with a vision prophetic

and a conviction intense, surpassing by far that of any man of his time, he added: "Yet, the day is not distant when it must bear and adopt it, or worse will follow. Nothing is more certainly written in the book of fate than that these people are to be free." But that was not all that Jefferson saw, or thought he saw, in that self-same "book of fate." He tells us that he read these ominous lines: "Nor is it less certain that the two races equally free (mark the deep significance of the qualifying word) cannot live in the same government. Nature, habit, opinion, have drawn indelible lines of distinction between them." It was this most fearful concatenation that gave Jefferson pause. All the powers of his mind were exerted to rend it asunder. He found but one solution of the problem —colonization.

So, as the great life drew to a close, "with one foot in the grave and the other uplifted to follow it," he left this parting admonition: "Rise and be doing. A million and a half are within our control; but six millions (which a majority of those now living will see them attain), and one million of these fighting men, will say, 'We will not go.'" It is probable that even then the question involved difficulties too formidable for the processes of peaceful adjustment. These difficulties multiplied (as the apostle of liberty had predicted they would) in a frightfully accelerating geometrical progression until they culminated in the tremendous cataclysm. The question of the moral wrong of slavery was far from being the only question in the case. Our ancestors had the wolf by the ears and it was but natural they should hesitate long before they turned him loose.

The people of Jackson County put the case very strongly when, in their statehood resolves, they declared that—

"This is a species of property which, perhaps, it might have been well for the national quiet, harmony and union of the United States had it never been known among them.

"But" our slaves are now here. They have been entailed upon us by our ancestors. Our knowledge has been coeval with the possession and use of them; and whether they be to us a blessing or a curse, they have grown upon our hands, and involved our means and support to such an extent that now to rid ourselves of them, either by emancipation or colonization abroad, without encumbering ourselves with a still greater evil and incurring an insupportable loss, would be a thing impossible; at least, a task which we are not willing, and which no human power can reasonably coerce upon us, to bear."

Insuperable as the problem seemed elsewhere, there was in the Territory of Arkansas an additional and a very grave complicating factor. "It cannot certainly be supposed," wrote Pike, "that it is for the interests of Arkansas to become a *free* state. Surrounded, as she would be, by Missouri, Tennessee, Mississippi, Louisiana, Texas and the Indian tribes—all of them slave countries—our State would become the land of refuge for runaways and vagabonds."⁷⁵

Then, descending on easy wing into a distinctly heavier atmosphere, this gifted son of Massachusetts, on whose ambrosial locks the tang of the salt sea air of her rock-bound coast still lingered, added: "Besides this, our revenue is to be raised from, and our rich lands settled by, the slaveholders."⁷⁶

Cupidity? Undoubtedly it did at this conjuncture play its part, as it often has done before, and as it will, so long as the constitution of man remains unchanged, continue to do. Cupidity must have been, in the convention of 1836, what it was in the federal convention of 1787, a powerful auxiliary moulding force. Standing in the Philadelphia convention in the debate on what George Mason of Virginia—Virginia, be it remembered—characterized as the "infernal" slave trade, Oliver Ellsworth, that other son of New England, a chief justice of the United States yet to be, and very much more besides, exclaimed: "Let every state import what it pleases. The morality or wisdom of slavery are considerations belonging to the states themselves." Then, with a weather eye on opulent Newport with her lucrative slave trade, he concluded with the unctuous aphorism, "What enriches a part enriches the whole."

The exasperating recrudescence of the abolition movement just at this time must have been not without influence on the deliberations of our convention. The right of agitators to interpose between the master and the slave—the relation having long since been fixed by the law of the land and confirmed by cus-

⁷⁵To the same effect, the address of August 10, 1835, from Washington County. "Environed, as we are, on all sides by slave-holding powers (although opposed to slavery in the abstract), yet, humanity, policy and love of good order and harmony would prompt us to seek a guarantee that would secure us in the possession and enjoyment of this species of property, while at the same time it will exempt us from all the annoyances incident to the opposite course of things."

⁷⁶*Advocate*, June 10, 1835.

tom and habit—was peremptorily challenged. Nor did it alleviate the irritated feelings of the slaveholder for him to bitterly recall that many of the very agitators who thus sought to annul the title by which the white man of the south held the black man in bondage were the descendants of those vendors who had caught and who had sold the black man for a great consideration to the ancestors of the present holders. That circumstance could not, indeed, validate the title, but it might not unreasonably be insisted that the agitators were thereby disqualified, at least, from clambering into the judgment seat. Our fathers, when they met to frame the constitution of 1836, were in the fell clutch of inexorable circumstance. They were but men, and being men, they temporized and compromised with the monster. In this they could point for justification to the illustrious example of the constitution of the United States, where the wise men of 1787 had done the same. The men of 1836 could not escape their environment, and they built accordingly.

The existence and assumed continuance of the institution of slavery was recognized. Provision was made for protecting interests which, so far as the positive law could make them so, might be characterized as vested interests, and provision was also made for ameliorating, as far as seemed practicable, the condition of the slave. Accordingly, the general assembly was empowered to oblige the owners of slaves to treat them with humanity, and it was declared that on the prosecution of slaves for any crime they should not be deprived of an impartial jury, and that any slave who should be convicted of a capital offense should suffer the same degree of punishment as would be inflicted on a free white person, and no other;⁷⁷ and courts of justice before whom slaves were tried were required to assign them counsel for their defense.

When we come to relate the story of how the constitution fared in the congress of the United States, we shall find that much was made by some of those who opposed granting statehood to Arkansas to the clause in the instrument which declared

⁷⁷It should be noted, however, that the protective value of this provision was materially weakened by the construction given by the supreme court in *Charles vs. State*, 11 Ark., p. 389.

that the general assembly should have no power to pass laws for the emancipation of slaves without the consent of the owners, and this notwithstanding the assembly was given power to permit owners of slaves to emancipate them. There was nothing exceptive in the provision to which so much acrimonious objection was made. It was found in the constitutions of all, or nearly all, the southern states. Nay, more. Texas had peremptorily prohibited emancipation under any conditions whatever. Only two years later (1838) Florida did the same, and only one year later (1837) Maryland did virtually the same thing by declaring that no emancipation laws should be passed save by unanimous vote of the legislature. Sweeping with retrospective vision three-quarters of a century of the corridors of Time, we who are of today may think that, had we been actors in that generation, we would have ordered things differently. That is not at all probable. We are all sufficiently wise after the fact, and even the dwarf, when perched on the shoulders of the giant, commands a wider prospect than the giant.

“If he had been as you; and you as he,
You would have slipped like him.”

But *did* they slip?

A famous man—one who both made and wrote history—has recorded his conviction that a statesman, when confronted with such a gigantic fact as, for instance, human slavery, “would doubtless remember that the world is full of institutions which, though they never ought to have been set up, yet, having been set up, ought not to be rudely pulled down; and that it is often wise in practice to be content with the mitigation of an abuse which, looking at it in the abstract, we might feel impatient to destroy.”

Where Arkansas would have stood today had she entered the Union as a free state, opens up a boundless field for speculation—a field on which I shall not venture. Whatever is, is right, embodies a most comfortable philosophy. It also embodies a great and universal truth, provided, only, we take the interstellar spaces for our yard stick and the aeons as our hour glass. But, descending to finite measurements and to more practical lessons: He who believes that “the world spirit is a good

swimmer," and that "storms and waves cannot drown him," who believes that "through evil agents, through toys and atoms, a great and beneficent tendency irresistibly streams," and who, with an abiding faith, interprets "what the centuries say against the hours," will look back on the history of our State without either regret or bitterness, and will then turn his face resolutely to the future with a radiant hope that all is well.

III.

There being no trammeling conditions imposed by the legislative act which had called the convention into being, the convention did not elect to submit the constitution to the people of the State for their approval.⁷⁸

It remained, therefore, a mere proposal in abeyance pending the action of congress; and hence, with the adjournment of the convention the action shifts from the Arkansas to the Potomac. On the watch tower there the lone, tireless sentinel, sweeping with anxious eye the southwestern horizon, awaited the coming of the official copy of the constitution. But the way was long, and, for some unexplained reason, the messenger, so unlike his wont, seemed to travel with leaden heel.

On the last day of February Sevier received the *Gazette* extra of February 4, containing a copy of the constitution, and on the following day (March 1) he "presented" this copy in the house as, so runs the record, "the constitution adopted by the convention of the citizens of Arkansas, etc."⁷⁹

The same day he wrote Woodruff at Little Rock:

"I received on yesterday your extra *Gazette* containing the constitution, and on today I presented your extra to congress. I have no doubt but your paper contains an exact copy of the constitution, and I thought it better to have it before the committee without delay. Mr. Noland has not yet arrived, nor am I able to account for his delay."

"I think the constitution an excellent one. There are but few things in it, and they are of minor importance, that I would alter. But what has become of the ordinance? If there should be any difficulty now, it

⁷⁸It is worthy of mention that since the framing of the constitution of 1836 the almost universal practice in the various states has been to submit the paper to the people for ratification or rejection. This seems more consonant with the spirit of our institutions.

⁷⁹*Congressional Globe*, twenty-fourth congress, first session, Vol. 3, p. 197.

will be on account of no provision being inserted upon the subject of taxing the public lands within our limits. I hope that such an important arrangement has not been omitted, but will be brought on by our messenger.''⁸⁰

Woodruff procured a copy of the ordinance and mailed it to Sevier at once. On March 2 Sevier wrote Woodruff again:

"The committee this morning reported a bill to admit Michigan upon condition of her modifying her boundary line. Mr. Noland has not yet arrived, and, in our case, no report can be made until the official copy of our constitution shall arrive. To save time I submitted your extra *Gazette* containing the constitution, but not the ordinance, nor the signatures of the members of the convention. This will answer for an investigation of the subject, but will not do for the final action of the congress. It is to be regretted that an official duplicate of the constitution and ordinance, if an ordinance was adopted, had not been sent me by mail. If any accident should have befallen the messenger, and the constitution be lost, we shall be in an unpleasant condition. To guard against every accident, please procure and send me by mail forthwith a certified copy of the constitution and ordinance."

On March 4 Sevier presented the ordinance. This was unquestionably an unofficial copy. It was referred to the committee on territories and ordered to be printed.⁸¹

On March 8 the belated messenger reached Washington. Sevier's joy was tinged with regret, for the sole copy of the precious document was addressed, not to him, but to the secretary of state.

"Fent Noland," thus runs Sevier's letter to Woodruff, "Fent Noland arrived in this city a few minutes ago with the constitution. He brought but a single copy of that instrument, and that addressed to the secretary of state. It is likely the secretary will lay it before the president without delay, and I think it probable the president may conceive it his duty to lay it before congress. The convention probably designed that I should have nothing to do with the constitution, and therefore sent me no copy.

"Before his arrival we had had the constitution under consideration. A bill for our admission was assented to by a majority of the committee and will be reported on the day after tomorrow. I shall draw it up tonight for the committee. There was no objection as to the mode of our application for admission, but there will be an effort, I fear, on the part of some to revive the slave question. But it will be unavailing. We shall come in with our constitution; but in regard to the ordinance, I can assure you thus far in advance that upon that the pruning knife, with a heavy hand, will have to be used, or it will not go through."⁸²

⁸⁰*Gazette*, March 29, 1836.

⁸¹*Congressional Globe*, twenty-fourth congress, first session, Vol. 3, p. 205.

⁸²*Gazette*, March 29.

The wounded sensibilities of the faithful Sevier were soothed by the assurance from Woodruff that the sending of the constitution to the secretary of state direct was intended as a mark of respect for that official, but in no way as a slight to the valued public servant.

On March 10 President Jackson sent a message to congress transmitting the proceedings of the constitutional convention together with a copy of the constitution. Mr. Buchanan, at the request of the delegate from Arkansas, moved to refer it to a select committee. Mr. Clayton thought a reference to the select committee, raised on the application of Michigan for admission into the Union, would be preferable.

The yeas and nays being ordered on the motion of Mr. Buchanan, it carried by a vote of 22 to 17.⁸³

On March 14 Sevier wrote Woodruff:

"On this morning the bill for our admission was finally discussed and settled in committee on territories, and will be reported by Mr. Patton, the chairman, as soon as he can get the floor. Don't be astonished if we have another Missouri discussion upon the subject of slavery. The senate has given us a select committee upon the subject. They were kind in this, and it augurs well. It is just the committee that I desired. They will meet tomorrow."

The foregoing letter was followed by another under date of March 17.

"For several days," he writes to Woodruff, "the bill has been in the hands of Mr. Patton of Virginia, and thus far special orders, having precedence, have precluded him from presenting it to the house. This morning I attended the sitting of the select committee of the senate, and I have the happiness to inform you that the committee were unanimous in instructing Mr. Buchanan, the chairman, to report a bill for our admission into the Union forthwith. He will make his report on Monday next.

"In regard to the ordinance, which will be a separate matter, I shall have some trouble. I have no fears of being able to obtain of congress as much as any other state has ever received. I shall certainly get all I can; and, if I obtain as much as other states have received, I hope my acts as a treaty maker will receive the affirmation and ratification of our legislature. This I shall have a right to expect; and, expecting it, I hope I shall not be disappointed, as the heavy responsibility of adjusting these important interests has been committed to my management without my solicitation or knowledge."

March 22, 1836, Mr. Buchanan, from the select committee,

⁸³*Congressional Globe*, twenty-fourth congress, first session, Vol. 3, p. 222.

reported to the senate a bill for the admission of Arkansas into the states of the Union, which was read twice.⁸⁴

On March 29, 1836, the entire day in the senate was consumed in the discussion of the bill for the admission of Michigan.⁸⁵

On the same day Sevier, ever alert, writes to the *Gazette*:

"The discussion upon the admission of Michigan and Arkansas has commenced in the senate. Michigan is now under consideration, and when she is disposed of Arkansas will come upon the tapis.

"Judging from what I saw today, I think there will be considerable discussion upon the propriety of admitting Michigan; and if, perchance, she should be rejected, that circumstance may operate prejudicially to Arkansas. I hope, however, for a favorable decision upon the important interests we have involved."

The discussion in the senate continued through March 30, March 31 and April 1.⁸⁶ How the tide of battle went in this great muster of parliamentary talent is related by Sevier in a communication under date of April 1 to the *Gazette*.

"At half after twelve today," he writes, "the question of the admission of Michigan came up for consideration, and a more violent opposition to her admission into the Union I have never witnessed. On almost every question the yeas and nays were taken. It was throughout, with the exception of Judge White's vote, a complete party vote. Three senators were absent, two of them of the opposition and one of the administration party. Had the senate been full there would have been a tie, and the vice president would have given the casting vote. He was in attendance up to the moment of adjournment, and would have voted for her admission. With the fortunes of Michigan our fate was, and is, indissolubly connected. The bill for her admission has been ordered to be engrossed, and on tomorrow I calculate upon the passage of the bill in the senate for the admission of Michigan and Arkansas. You will see that Michigan is admitted upon terms that she shall modify her boundaries by a call for another convention.

"Having no such difficulty in our way, we shall be in the Union before Michigan. Wright of New York, Buchanan of Pennsylvania and Benton deserve everlasting honor at the hands of Arkansas and Michigan for the zeal and ability with which they have fought our battle and vindicated our cause. They and the administration party generally should never be forgotten by the friends of free government throughout the world."

⁸⁴Register of Debates of Congress, twenty-fourth congress, first session, p. 934; *Congressional Globe*, twenty-fourth congress, first session, volume III, pp. 247-8.

⁸⁵*Congressional Globe*, twenty-fourth congress, first session, volume III, p. 268.

⁸⁶*Congressional Globe*, twenty-fourth congress, first session, volume III, pp. 272-275, 276.

On April 2 the bill admitting Michigan was passed, says Benton in his *Thirty Years View*, by rather a close vote—24 to 18, the latter being all senators in the opposition.

"From the time of the admission of new states it had been the practice to admit a free and slave state together, or alternately, so as to keep up a numerical equilibrium between them—a practice resulting from some slight jealousy existing from the beginning between the two classes of states. In 1820, when the Missouri controversy inflamed that jealousy, the State of Massachusetts divided herself to furnish territory for the formation of a new free state (Maine) to balance Missouri, and the acts of congress for the admission of both were passed contemporaneously March, 1820. Now, in 1836, when the slave question again was much inflamed, and a state of each kind to be admitted, the proceedings for that purpose were kept as nearly together as possible, not to include them in the same bill.

"The moment then that the Michigan bill had passed the senate, that of Arkansas was taken up under the lead of Mr. Buchanan, to whom the Arkansas application had been confided, as that of Michigan had been to Mr. Benton" (p. 629).

The motion to adjourn having been voted down, on motion of Mr. White, the bill was so amended "as to provide more effectually against any difficulties as to the boundary with the western Cherokees."

Messrs. Calhoun, Southard, King of Alabama, Clay, Benton, Walker, Preston and Ewing made brief remarks which have not been preserved. Mr. Ewing objected to giving his vote on a bill which he had had no opportunity to make himself acquainted with. Mr. King of Alabama moved the senate adjourn. He, as a southern man, felt no apprehension as to the bill passing without difficulty on Monday, and being sent to the other house so as to pass that body with the Michigan bill. Mr. King's motion was lost.

After some remarks from Mr. Crittenden, Mr. Buchanan explained the bill fully, expressed his anxiety that it should pass and be sent to the other house simultaneously with the Michigan bill, in order that the two states might come into the Union together. He explained that the bill contained no provision that had been objected to in the Michigan bill, and, in reply to an inquiry of Mr. Calhoun, stated that the rights of the government to its public lands in the State were perfectly guarded. The bill was then ordered to be engrossed for a third reading without a division, and the senate adjourned.⁸⁷

⁸⁷*Congressional Globe*, first session, volume III, p. 277.

Sevier thus records the day's doings in a letter under date of April 2, to the *Gazette*:

"The battle in the senate today upon the admission of Michigan was renewed, and about sunset the bill was passed.

"After that the Arkansas bill was taken up, considered in committee, and ordered to be engrossed for a third reading and final passage in that body on Monday next."

On Monday the senate resumed consideration of the bill.

"Mr. Benton observed that he had no intention to delay the passage of the bill, but on account of the circumstances under which the two bills for the admission of Michigan and Arkansas into the Union had been brought forward—he alluded to the great agitation on the subject of slavery—he thought it due to the occasion to notice one remarkable fact that ought to be taken into consideration by the people of the United States. It was worthy of notice that on the presentation of these two great questions, those gentlemen who had charge of them were so slightly affected by the exertions that had been made to disturb and to ulcerate the public mind on the subject of slavery as to put them in the hands of senators who might be supposed to entertain opinions on that subject different from those held by the states whose interests they were charged with.

"Thus the people of Arkansas had put their application into the hands of a gentleman representing a nonslave-holding state; and the people of Michigan had put their application into the hands of a senator (himself) coming from a state where the institution of slavery existed, affording a most beautiful illustration of the total impotence of all attempts to agitate and ulcerate the public mind on the worn-out subject of slavery. He would further take occasion to say that the abolition question seemed to have died out, there not having been a single presentation of a petition on that subject since the general jail delivery ordered by the senate."

Mr. Swift stated that he could not vote for the bill, because the new constitution of Arkansas made slavery perpetual.

Mr. Buchanan observed that on the subject of slavery the constitution was more liberal than the constitution of any of the slave-holding states that had been admitted into the Union. It preserved the very words of the other constitutions in regard to slavery; but there were other provisions in it in favor of the slaves, and among them a provision which secured to them the right of trial by jury, thus putting them, in that particular, on an equal footing with whites.^{ss}

He considered the compromise which had been made when Missouri was admitted into the Union as having settled the question as to slavery in the new southwestern states; and the committee, therefore, did not think proper to interfere with the institution of slavery in Arkansas.

^{ss}Honorable as these provisions were to the people of Arkansas, yet, in so far as Mr. Buchanan's remarks seem to imply that the right of trial by jury extended by the constitution of 1836 was exceptional, the statement is not quite accurate. The then existing constitutions of Alabama and Kentucky contained similar clauses.

Mr. Prentiss stated that he had voted against the admission of Michigan and would have to vote against the admission of Arkansas. The movements of these two territories, with regard to their admission, were decidedly revolutionary, forming their constitutions without the previous consent of congress and importunately knocking at its doors for admission. He stated his objection to Arkansas was that she had not only formed her constitution without the consent of congress, but had made slavery perpetual in that constitution.

Mr. Morris favored the bill. He stated that coming from a free state, and believing slavery wrong in principle and mischievous in practice, he desired to be clearly understood as to his reasons for supporting the bill. He objected to the Arkansas constitution, because it recognized slavery, and settled and fixed it as a fundamental principle in her government. He would, he said, vote against the admission of the State if he believed he had the power to do so. The wrong, in a moral sense, of slavery would justify him in a negative vote, if he did not consider his political obligation and his duty as a member of the senate to the constitution, under which he was then acting, clearly required him to vote affirmatively. He held that American citizens had the right to provide their own constitutions and to be admitted into the Union under the constitution of their own making.

Neither were they bound to wait until Congress consents to the making of a constitution. Power was given by the constitution of the United States to congress to admit new states, and, as a state, the application must be made.

A state government and a state constitution must come first, and it was not necessary to ask congress to form a constitution. Congress had no power to prescribe the mode by which the people should form a state constitution. He stated he had no right to assume that those who formed the constitution were incompetent, or that it did not express the opinions and wishes of the people of that country.

Congress could not look into the constitution prepared by the people of a state to see whether it was republican in form, provided, only, it contains the great principle that all power

is inherent in the people, and that the government drew its just powers from the governed.

The people of Arkansas had formed a constitution, had presented it here for admission into the Union, had made it republican in form, and were sufficiently numerous to entitle them to a representative in congress. He believed that congress had no right or power to regulate the police these people have established for themselves; and the ordinance of 1787, not operating on them, nor having entered into any agreement with the United States that slavery should not be admitted in their State, they, therefore, had, in his opinion, the right to choose for themselves, much as he regretted their choice.

Mr. Porter objected to the manner in which Michigan and Arkansas had proceeded, and would have to vote against the bill. Mr. Ewing objected to this also, but said that he could not refuse to give his vote in favor of the bill. The yeas and nays were then had with thirty-one voting yea and six nay. The yeas were: Benton, Brown, Buchanan, Calhoun, Clayton, Cuthbert, Ewing of Illinois, Ewing of Ohio, Grundy, Hendricks, Hill, Hubbard, King of Alabama, King of Georgia, Linn, McKeon, Mangum, Moore, Morris, Nicholas, Niles, Preston, Rives, Robinson, Ruggles, Shepley, Tallmadge, Tipton, Walker, White and Wright.

The nays were: Clay, Knight of Rhode Island, Porter of Louisiana, Prentiss of Vermont, Robbins of Rhode Island and Swift of Vermont.⁸⁹

Sevier thus tersely registers the action of the senate:

"The senate have this morning given the final vote upon the admission of Arkansas into the Union. Yeas 31, nays 6, of whom Clay of Kentucky and Porter of Louisiana are two."⁹⁰

On the next day this letter followed:

"The smallness of the final vote in the senate requires explanation. The senate consists of 48 senators; of this number Webster, Goldsborough and Wall were absent from the city. All the residue were in their places, and when the yeas and nays were called, refused to vote.

"Of this number of dumb senators were Leigh of Virginia and Crittenden of Kentucky. Comment is unnecessary."

⁸⁹Register of Debates, twenty-fourth congress, first session, pp. 1052, 1053, 1054, 1055, 1066; *Congressional Globe*, volume 3, p. 279.

⁹⁰Sevier's letter of April 4, in *Gazette*.

It is indeed. A few months later the expected happened. Michigan and Arkansas gave their electoral votes to Martin Van Buren.

A resident of Helena who witnessed the senate debate does not display the fine restraint that the delegate from Arkansas did. He writes that adjournment after adjournment and amendment after amendment was moved to defeat the Michigan bill. That the friends of Martin Van Buren stood firm and presented an unbroken front. That Judge White, who (at this crucial time, we may parenthetically remark) had a huge presidential bumblebee buzzing in his bonnet, used every power he possessed to defeat the just demands of Michigan.

Buchanan, the spectator from Helena writes, then called up the Arkansas bill, and the opposition tried to rally. Clay and Crittenden led the way. The firmness of Martin Van Buren's friends met the attack and carried the day—Judge White not daring to vote against Arkansas.⁹¹

The bill was now in the keeping of the house. Meanwhile, and swift on the heels of Mr. Benton's jaunty reference to "the worn-out subject of slavery," and to his expressed belief "that the abolition question seemed to have died out," came an avalanche of anti-slavery protests, prefiguring, all too unmistakably, the titanic struggle of the next generation.

In the senate Mr. Clay said several petitions had been sent to him from a large number of Philadelphia citizens remonstrating against the admission of Arkansas into the Union with the clause in her constitution prohibiting the exercise of the power to abolish slavery by her legislature. He at first had some doubts as to whether he should present these petitions, but after some consideration he felt that it was his duty to do so. He did not concur with the objects of the petition, believing that Arkansas or any other state or territory had a right to make, on the subject of slavery, what provisions she pleased. He "still adhered to the opinions expressed by him on a memorable occasion." He asked that one of the petitions be read, and that all of them might be laid on the table.

Mr. King of Alabama expressed regret that Mr. Clay had felt it his duty to introduce the memorials. He deprecated

⁹¹*Gazette*, April 14.

this interference and the possibility of a repetition of the agitation with regard to Missouri. He regretted that he had taken part in that compromise, stating that he had yielded too much in the spirit of conciliation. Mr. Clay replied that he had but performed a duty, and yet had been chided by the senator from Alabama for presenting the memorials with respect to the compromise. The constitution itself was a compromise, and the compromise which had been averted to in the admission of Missouri was one on which he would stand, on the ground of the great principle of the right every people had in forming their constitution.⁹²

In the house, speaking to the memorial of sundry citizens of Bristol, Pennsylvania, Mr. Wise objected to its reception. He said the memorial involved the question whether congress had the right to impose conditions in relation to the subject of slavery on the new states when admitted to the Union. He asked if it was the intention of gentlemen to disturb the Missouri compromise.

Mr. Speight said this involved the first attempt to interfere with slavery in the states. This question must be met and put down. He was well aware that nine-tenths of the people of the north were opposed to mooting this question. It was, he said, the work of a miserable, degraded faction. He declared that nothing but the respect he felt for the chair prevented him from rushing up to the table and tearing the petition to pieces.⁹³

On April 27 the bill for the admission of Arkansas was read twice in the house. A resolution to make the senate bill relating respectively to the Ohio boundary line, to the admission of Michigan and the admission of Arkansas a special order failed to command the necessary two-thirds majority.⁹⁴

Unfortunately, just at this most interesting stage there is a hiatus in the files of the *Gazette* in the congressional library. The silence is broken on the 6th of June. On that day Mr. Sevier asked the consent of the house to offer a resolution to set apart the next Wednesday at 11 o'clock, and each day thereafter, except Fridays and Saturdays, to consider and dispose

⁹²*Congressional Globe*, p. 298.

⁹³*Congressional Globe*, pp. 314, 315.

⁹⁴*Congressional Globe*, p. 334. Sevier's letter to *Gazette*, April 28.

of the bill to establish the northern boundary line of the State of Ohio, and to provide for the admission of Michigan and Arkansas into the Union. The rules were suspended and the resolution passed by a vote of 138 to 57.⁹⁵

On June 8, 1836, the house entered on a memorable debate. The Sevier resolution was considered in the following order:

"An act to establish the northern boundary line of the State of Ohio;" "An act to establish the northern boundary of the State of Ohio, and to provide for the admission of the State of Michigan into the Union upon the conditions therein expressed;" "An act for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes."

The first bill was laid on the table. The second bill providing for establishing the northern boundary of Ohio, and for the admission of Michigan into the Union being announced from the chair, Mr. Wise moved to postpone its further consideration till Monday in order to proceed with the Arkansas bill. This precipitated a debate which, in its last analysis, was, in racing parlance, a jockeying for position.

Mr. Thomas wished to know why southern men should now make an effort to give precedence to the bill for the admission of Arkansas. If, said he, they manifest distrust, must we not expect that fears will be entertained by northern men that unreasonable opposition will be made to the admission of Michigan?

Mr. Bouldin (the successor of John Randolph of Roanoke) said that it was obvious that both bills must be acted upon separately, and that one must have precedence in point of time. Michigan had it at this time. He was willing it should hold it. He had, he said, the most implicit confidence that no serious difficulty would be made to the admission of Arkansas in regard to negro slavery. If his confidence were misplaced he wished to know it. If, on a call of the yeas and nays, there were a majority who intended to put the south under any restraint on account of negro slavery, he should then act promptly and decisively, and he had no doubt all the south would do the same. If such a stand were taken by the nonslave-holding states

⁹⁵*Congressional Globe*, pp. 424, 425.

it would, he said with deep significance, "make little difference whether Michigan were in or out of this Union."

Mr. Lewis of North Carolina said he should vote for Mr. Wise's proposition to lay the bill for the admission of Michigan on the table until the bill for the admission of Arkansas should be first passed. There were dangers, he said, which beset Arkansas which did not beset Michigan. The question of slavery could be moved as a condition for the admission of Arkansas, and it could not as a condition to the admission of Michigan. If, said he, gentlemen mean to offer no obstruction to the admission of Arkansas, let them help the weaker party through with the weaker question by giving it precedence. It had been said that these two bills would be hostages for the safety of each other. This would not be true if the stronger bill were passed in advance of the weaker. The north wants no hostages on this subject. Their institutions cannot be attacked. The south wanted a hostage to protect it on a delicate question, and the effect of giving precedence to the Michigan bill was to deprive the south of the hostage.⁹⁶

In the end Mr. Wise withdrew his instructions, the motion to commit was carried, and, on motion of Mr. Sevier, the supplemental bill from the senate in relation to the admission of Arkansas into the Union was included in the special order on the other bills.⁹⁷

On June 9 Mr. Sevier called for the special orders of the day, namely, the Michigan and Arkansas bills, and the committee proceeded with its work. Not until midnight was the Michigan bill laid aside and the Arkansas bill taken up. The onset against and the defense of the measure centered ostensibly on two questions only.

First: Whether the act of framing the constitution without first having obtained the consent of congress was revolutionary.

Second: Whether the insertion of the clauses relative to slavery in the constitution itself was defensible; and, if not, whether congress, by admitting the State into the Union, would

⁹⁶Benton's "Thirty Years' View," volume I, p. 632.

⁹⁷Congressional Globe, first session, volume III, pp. 428, 429, 430.

not, by implication, in some measure commit itself to the sentiments embodied in the clauses.

There was, as we shall presently see, an extremely potent and distracting force of a purely partisan origin to be reckoned with—a force which sapped and mined, and so did not come to the surface of the arena. In the course of the debate, Mr. Hamer, answering the objections that the proceedings of Michigan and Arkansas had been lawless and revolutionary, said he could not assent to that proposition. He affirmed that every territory that desires to emerge from the dependent condition and become a state may either petition congress for leave to form a state constitution, and when that permission is given, proceed to form it, and present it for the approbation of congress afterward; or they may meet in the first instance to form the constitution and offer it for approval. There is no impropriety in either mode, for it is optional at last with congress to admit the state or not. There was nothing disrespectful in the proceedings of Michigan and Arkansas. On the contrary, there was much to justify them. "Year after year," said Mr. Hamer, "they petitioned for leave to form a constitution, and it was refused, or their application was treated with neglect. Wearied with repeated instances of this treatment, they have formed a constitution, brought it to us, and asked us to sanction it and admit them into the Union. We have the authority to do this, and, if their constitution is republican, we ought to do it."⁹⁸

The anti-slavery opposition to the bill was crystallized in two proposed amendments. One of these was offered by Mr. John Quincy Adams, "the vigilant eye of whose unsleeping mind," said Mr. Cushing, "nothing escapes," which declared that nothing in the act should be construed as an assent by congress to the article in the constitution in relation to slavery and the emancipation of slaves. The other amendment was offered by Mr. Slade and was designed to make it a condition precedent to the admission of the State that there be expunged from the constitution the clause which prohibited the general assembly from passing emancipation laws without the consent of the owners, and that there should be inserted in the consti-

⁹⁸Benton's "Thirty Years' View," p. 634.

tution a clause to the effect that no negro born in or brought into the State after its admission should be subjected to slavery.

Speaking to the Adams amendment, Mr. Cushing of Massachusetts preluded by saying that the house had then been in session for eighteen or nineteen hours without any interval of refreshment or rest. That it was obviously the purpose of the committee to set out the debate on the bills for the admission of Michigan and Arkansas into the Union. He then proceeded to state that, having been charged with sundry memorials from citizens of Massachusetts and New Hampshire, remonstrating against the clause in the constitution of Arkansas relating to slavery, he should be recreant to his trust if, without a word, he acquiesced in the admission of Arkansas into the Union "with all the sins of its constitution upon its head." He pointed to the clauses by which the legislature was forbidden to emancipate slaves within its jurisdiction, and by which it was forbidden to exclude slaves from being imported into the State. These clauses, he said, undertook "to foreclose in advance the progress of civilization and of liberty forever." He spoke, he protested, "not to assail slavery, but to defend liberty."

He repudiated the Missouri compromise, alleging that Massachusetts was not a party to the compromise; that most of her representatives in congress voted against it, and that those who did not were disavowed at home. Referring to what he alleged was Mr. Wise's threat that, if the north did not hold herself bound by the terms of the Missouri compromise, the south might be impelled to introduce slavery in the north, Mr. Cushing declared that it was true that invasion, pestilence and civil war might, in the long lapse of ages, exterminate the eight millions of free spirits who dwelt there.

"You may," he exclaimed, "raze to the earth the thronged cities, the industrious villages, the peaceful hamlets of the north. You may plant the very soil with salt, and consign it to everlasting desolation. * * * But I solemnly assure every gentleman within the sound of my voice, I proclaim it to the country and to the world that, until all this be fully accomplished to the uttermost extremity of the letter, you cannot, you shall not, introduce slavery into the heart of the north."⁹⁹

⁹⁹Benton's "Thirty Years' View," volume I, pp. 632-634.

Oratory, however lofty and animated, seldom wins votes in deliberative assemblies. Mr. Adams' amendment was rejected by a vote of yeas 32, nays 98. As the night wore away the committee repeatedly rose and reported no quorum. Finally, at half-past one in the morning, a call of the house was made, and in the gray light of dawn a laggard quorum assembled.

Considerable discussion was had on the Slade amendment, during which Mr. Jenefer was "repeatedly called to order by several gentlemen for indulging in personalities." The amendment having been voted down, Mr. Wise addressed the committee at length in opposition to the proceedings of the house during the night, when, as he alleged, "the members were sleepy, tired and drunk." Numerous parliamentary attempts were made to sweep Mr. Wise off his feet, but he stood four square to all the winds that blew, declaring that "he now had it in his power to have his will, and, so help him God, he would avail himself of it." The goal of his ambition was to talk until 10 o'clock. He attained it; and shortly after, and following a continuous session of twenty-five hours, the committee, exhausted, rose and reported the Michigan and Arkansas bills to the house without amendment.

On Monday, June 13, the house, in execution of the special order of the preceding Monday, then proceeded to the consideration of the bill for an act to establish the northern boundary of Ohio, and to provide for the admission of Michigan, and of the bill for an act for the admission of Arkansas. The house first considered the Michigan bill, and it was passed.¹⁰⁰

The Arkansas bill was then brought forward, and Mr. Adams having made an unavailing effort to renew the amendment which had been submitted by him in committee of the whole in relation to the restriction of slavery in the State, the bill was ordered to a third reading. The passage of the bill quickly followed. Yeas 143, nays 50.

Mr. Conner then remarked that, "as the house had been delivered of twins, he thought, after the operation, they might adjourn." This was accordingly done; and so, like a splendid

¹⁰⁰There was no count reported on the passage of the Michigan bill, but on the motion that it be read the third time, the vote was yeas 153, nays 45.

sunset after hours of storm, a day big in the annals of Arkansas came to a tranquil close.¹⁰¹

An eminent statesman of that day has left to us a commentary on this great parliamentary debate, a debate in which, at one stage, he was a conspicuous participant.

This is his summing up: After giving the names of those voting nay on the Michigan bill, and calling attention to the fact that "this list of nays begins with Mr. Adams and ends with Mr. Wise—a proof that all the negative votes were not given upon the same reason;" and after giving, also, the names of those voting nay on the Arkansas bill and pointing to the circumstance that "here again the beginning and the ending of the list of voters is remarkable, beginning again with Mr. Adams and terminating with Mr. Lewis Williams of North Carolina, two gentlemen wide apart in their political courses, and certainly voting on this occasion on different principles," he concludes:

"From the meagreness of these negative votes it is evident that the struggle was on, not to pass the two bills, but to bring them to a vote. This was the secret of the arduous session of twenty-five hours in the house. Besides the public objections which clogged their admission—boundaries in one, slavery in the other, alien voting and (what was deemed by some) revolutionary conduct in both in holding conventions without authority of congress; besides these public reasons, there was another cause operating silently, and which went more to the postponement than to the rejection of the states. This cause was political and partisan, and grew out of the impending presidential election to be held before congress should meet again. Mr. Van Buren was the Democratic candidate, Gen. William Henry Harrison was the candidate of the opposition, and Mr. Hugh L. White of Tennessee was brought forward by a fraction which divided from the Democratic party. The new states, it was known, would vote, if now admitted, for Mr. Van Buren, and this furnished a reason to the friends of the other candidates (even those friendly to eventual admission, and on which some of them were believed to act) to wish to stave off the admission to the ensuing season. The actual negative vote to the admission of each state was not only small, but nearly the same in numbers, and mixed both as to political parties and sectional localities, so as to exclude the idea of any regular or considerable opposition to Arkansas as a slave state. The vote which would come nearest to referring itself to that cause was the one on Mr. Adams' proposed amendment to the state constitution, and there the whole vote amounted to only 32; and of the sentiments of the greater part of these, including Mr. Adams himself, the speech of that gentleman must be considered the authentic exponent; and will refer their opposition, not to any objection to the admission of

¹⁰¹*Congressional Globe*, twenty-fourth congress, first session, volume III, pp. 441, 442.

the State as slave holding, but to an unwillingness to appear upon the record as assenting to a constitution which forbade emancipation and made slavery perpetual. The number actually voting to reject the State and keep her out of the Union because she admitted slavery must have been quite small—not more in proportion, probably, than what it was in the senate.¹⁰²

Meantime, the senate had, on May 26, 1836, passed the bill supplementary to the act providing for the admission of Arkansas.¹⁰³ On June 14, on motion of Mr. Sevier, the house went into committee of the whole on the state of the union, and proceeded to consider the supplementary act for the admission of Arkansas and also the supplementary act for the admission of Michigan. Both bills were then reported to the house with amendments, and both were ordered to be engrossed for a third reading on the morrow.¹⁰⁴ On June 15 the supplementary bill for an act for the admission of Michigan and the supplementary bill for an act for the admission of Arkansas were passed. The votes thereon were not recorded.¹⁰⁵

The "act for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes," was approved by the president and became a law June 15, 1836, a few minutes after the approval of the Ohio boundary and Michigan act.

The enabling act, after reciting that the constitution and state government of Arkansas was republican, and that the number of inhabitants exceeded forty-seven thousand seven hundred persons, enacts that Arkansas shall be one of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatsoever. It then declares the boundaries of the State substantially as described in the constitution.

It provides further that, until the next general census shall be taken, the State shall be entitled to one representative in the house of representatives of the United States, and that all the laws of the United States not locally inapplicable shall have the same force in Arkansas as elsewhere within the United States. Provision is further made for one judicial district with one judge at an annual salary of \$2,000.00, having the same jurisdiction as the judge of the Kentucky district. Provision is also made for a person learned in the law to act as attorney for the United States with a compensation of \$200.00 per annum and fees. Provision is also made for a marshal.

¹⁰²Benton's "Thirty Years' View," volume I, pp. 637, 638.

¹⁰³*Congressional Globe*, twenty-fourth congress, first session, volume III, p. 405.

¹⁰⁴*Congressional Globe*, twenty-fourth congress, first session, volume III, p. 447.

¹⁰⁵*Congressional Globe*, twenty-fourth congress, first session, volume III, pp. 447.

It is further declared that Arkansas is admitted into the Union on the express condition that the people of the State shall never interfere with the primary disposal of the public lands in the State, not levy a tax thereon, and that nothing in the act shall be construed as an assent by congress to all or any of the propositions contained in the ordinance of the convention aforesaid, nor to deprive the State of the same grants subject to the same restrictions which were made by virtue of the act of March 6, 1820, authorizing Missouri Territory to form a constitution.

The "act supplementary to the act entitled 'An act for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes,'" was approved June 23, 1836, a few minutes before the approval of the Michigan supplementary act.

The supplementary enabling act declares that, in lieu of the propositions submitted by the convention ordinance (which are rejected), the following propositions are offered to the general assembly of Arkansas for their free acceptance or rejection, which, if accepted by the assembly under the authority granted to the assembly by the convention, shall be obligatory upon the United States, to-wit:

"That the sixteenth section in every township shall be granted to the State for the use of the inhabitants of such township for the use of schools.

"That all salt springs, not exceeding twelve in number, to be selected by the general assembly with six sections of land adjoining, shall be granted to the State, with provisos saving vested rights of individuals, and prohibiting the sale or lease of the same for a longer period than ten years save with the consent of congress.

"That five per cent of the net proceeds of the sale of the public lands in the State shall be reserved for making public roads and canals within the State under the direction of the general assembly.

"That not exceeding five sections of land to be selected by the general assembly, in addition to the ten already granted, shall be granted for the purpose of completing the public buildings of the State at Little Rock.

"That two townships of land already located are vested in the general assembly to be appropriated solely to the use of a seminary of learning in Arkansas.

"The said foregoing propositions being on condition that the general assembly of the State shall provide by an ordinance irrevocable without the consent of the United States, that the general assembly shall never interfere with the primary disposal of the soil within the State by the United States, nor with congressional regulations for securing the title in said lands to the *bona fide* purchasers thereof, and that no tax shall be imposed on lands the property of the United States, and that non-resident proprietors shall not be taxed higher than resident, and that the bounty lands granted for military services during 'the late war' shall, whilst they are held by the patentees or their heirs, remain exempt from any tax laid under the authority of the State for three years after the date of patents."¹⁰⁶

¹⁰⁶The original act for the admission of the State of Arkansas into the Union may be found in the United States Statutes at Large, volume

The passage of the bills was announced with characteristic modesty by Sevier in a letter to Woodruff under date of June 15, thus:

"This day the president signed the bill for the admission of the States of Arkansas and Michigan into the Union; and today the supplemental bills respecting the grants to the two new States also passed. They will be approved today or tomorrow.

"In our bill, in addition to the provisions granted to Missouri and the new states, we have five sections of land to complete our state house. The legislature is to have the disposal of it, and, with this exception, it is a copy of the ten-section bill. Michigan and Arkansas have got clear of an inequity imposed upon all the other new states; that is, they are authorized to tax land as soon as it is sold. In the other states no tax can be imposed upon land for five years after sale."

The interest now centers in the infant commonwealth. Sevier had left Washington on June 18, and, most auspiciously, he had reached home on the evening of July 4.

"He found," said Thomas J. Pew, the new proprietor of the *Gazette*, "our whole population in their holiday colors, just commencing a brilliant illumination of the town, and amidst the festivities and public rejoicings for our admission into the Union—an event in which he bore the leading part as one of the benefactors of the State."¹⁰⁷

Coming events cast their shadows before. While the bill for the admission of the State was still in embryo, antagonistic forces in the territory had begun to align, and, soon after, under the respective standards of James S. Conway for governor and Archibald Yell for congress, and of Absalom Fowler for governor and William Cummins for congress, they engaged in a warm contest for political supremacy. The militant Jack-

5, pp. 50, 52, and the supplementary act thereto may be found in the same volume at pp. 58, 59.

These acts are also found in the various digests of the laws of the State which have, from time to time, been compiled and published by legislative authority. The first of these digests in point of time is that of McK Ball and Roane (1838). See also Kirby's Digest (1904). In both of these digests and all others (save Gould's) the original act is erroneously stated to have been approved June 16. In this connection reference is made to Gilbreath vs. Kuykendall (1 Ark., 50), where it is expressly held that the constitution of 1836 went into effect June 15, 1836.

It is to be noted here that the following acts of congress are in substantial modification of the foregoing enabling acts, to-wit: Act February 15, 1843; act July 29, 1846; act March 3, 1847.

¹⁰⁷*Gazette*, July 5, 1836.

sonian Democracy was in the saddle, and Conway for governor and Yell for congress were returned by sweeping majorities.

It is gratifying to read that, amid all this strife of parties, the *Gazette* was still able to say, as early as August 9, 1836:

“It would seem, from the returns of the election, that Colonel Sevier is to have the first seat in the senate of the United States by the common consent of all parties.”

The first legislature of the State of Arkansas having, in pursuance of the mandate of the constitution, convened at Little Rock on Monday, September 12, 1836, elected Sam C. Roane president of the senate and John Wilson of Clark County speaker of the house of representatives.

Governor Fulton delivered his valedictory. Governor Conway was inaugurated. The various state officers were chosen. Ambrose H. Sevier and William S. Fulton were elected United States senators on the first ballot. Fulton received 56 votes—all but four. To Sevier was reserved the signal honor of receiving an unanimous vote of 60. *Finis coronat opus.*

Shortly afterward the ordinance of the general assembly became a law, whereby the congressional act “supplementary to the act entitled an act for the admission of the State of Arkansas into the Union, and to provide for due execution of the laws of the United States within the same, and for other purposes,” was “freely accepted, ratified and irrevocably confirmed as articles of compact and union between the State of Arkansas and the United States.”¹⁰⁸

Thus the young State set out on her life journey.

From time to time amendments—twelve in all—were added to the original instrument. The first four amendments were ratified November 17, 1846. Of these, the first declares that

¹⁰⁸The ordinance became a law October 18, 1836. It provides that the general assembly of the State shall never interfere without the consent of the United States, with the primary disposal of the soil within the State owned by the United States, nor with any regulations congress might find necessary for securing the title in said soil to the *bona fide* purchasers thereof; and that no tax should be imposed upon land of the United States, nor nonresident proprietors be taxed higher than resident; that the bounty lands granted, or to be granted, for military services during “the late war” should, while held by the patentees, or their heirs, remain exempt from taxation for three years from the date of patents.

(Revised Statutes Arkansas, McK Ball and Roane’s Revision (1838), p. 54; Kirby’s Digest, Statutes of Arkansas (1904).)

no bank shall be hereafter established or incorporated in the State. The second provides that the general assembly shall have power to compel the circuit judges to interchange circuits. The third provides that the general assembly shall have power to confer jurisdiction on justices of the peace in all matters of contracts, covenants, and in actions for the recoveries of fines and forfeitures when the amount claimed does not exceed one hundred dollars, and in penal offenses, less than felony, punishable by fine only. The fourth provides that all officers whose term is fixed by the constitution to a specific number of years shall hold their respective offices for the term specified, and until the election and qualification of their successors. The fifth, sixth, seventh, eighth and ninth amendments were ratified November 24, 1848. Of these, the fifth declares that the qualified voters of each judicial circuit shall elect their circuit judge. The sixth declares that the qualified voters of each judicial circuit shall elect their prosecuting attorney for the State. The seventh declares that the qualified voters of each county shall elect a county and probate judge. The eighth declares that no member of the general assembly shall be elected to any office within the gift of the general assembly during the term for which he shall be elected. The ninth declares that the general assembly shall not be restricted as to the number of counties that shall compose a judicial circuit. The tenth amendment was ratified December 2, 1850. It provides that the words "except Washington County, which may be reduced to six hundred square miles," included in brackets "in the twenty-ninth article" be stricken out of the constitution.¹⁰⁹

The eleventh and twelfth amendments were ratified February 12, 1859. The eleventh declares that no county at that time established by law shall be deemed unconstitutional on account of its containing less than nine hundred square miles. The twelfth provides that the State of Arkansas shall not be sued in any of its courts.¹¹⁰

¹⁰⁹There was no twenty-ninth article to the constitution of 1836. It is obvious that the amendment went to the twenty-ninth section of article IV.

¹¹⁰American Charters, Constitutions and Other Organic Laws (Thorpe), volume I, p. 287.

The text of the constitution of 1836 may be found in the various

As this story of the framing and acceptance of the constitution of 1836 draws to its close, the thoughts of the reader will revert inevitably to one great name. The mind of Sevier was capacious and practical. He was neither a laggard nor a rash anticipator. Animated by a not ignoble opportunism, he had, in the contest on which were staked the destinies of the young State, played his part with consummate address—always alert, discerning, resourceful. He had at this conjuncture, it is true, powerful and loyal allies—Woodruff and Pike and Ashley (*clarum et venerabile nomen!*), and Fowler, and Walker, and Scott, and Bates, and scores of other able, patriotic and far-seeing men, all encouraged and supported by an overwhelming public sentiment. Nevertheless, on a general survey of the field, and after all legitimate deductions have been made, Sevier still stands the protagonist of the statehood era. Nay, more, his just fame rises yet higher. So conspicuous and sustained was the ability which in his high place he continued to display until, with his sun still in its meridian splendor, his earthly career closed, that, to this day, and in the long perspective of more than seventy years, he looms one of the very few dominant figures in the annals of the commonwealth.

IV.

We pass now to a consideration of the genesis of the constitution of 1836 in a wider view; to an examination of its text, and to an attempt to ascertain the significance that attaches to it.

Whence, then, and when, came the constitution of 1836? In a very gross and palpable sense it may be said to have emerged from a certain Presbyterian church near the banks of the Arkansas, on the 30th day of January, 1836. This,

digests of the laws of the State beginning with that of McK. Ball and Roane (1838), and ending with that of Kirby (1904). Amendments 11 and 12 seem to have vanished utterly.

They were proposed by the general assembly begun on the first Monday of November, 1856, and ratified by the general assembly begun on the first Monday in November, 1858, and may be found at page 315, acts of the general assembly begun on said first Monday in November, 1858. The first digest published subsequent to the ratification of these two amendments was Gantt's. It does not contain them, and they have been consistently omitted from all the digests following Gantt's.

however, would be a most superficial statement. "Written constitutions," said Daniel Webster, "sanctify and confirm great principles, but the latter are prior in existence to the former." "Constitutions," said Sir James Mackintosh, "grow, they are not made."

Our document has, in truth, a lineage so ancient that, compared with it, the lineage of the most illustrious kings and nobles is but as of yesterday. Beginning at a time when the Eternal City ruled the world from her seven hills, the splendid dynasty comes down through the trade guilds of the reigns of Henry I and Edward IV, thence to the charter of Elizabeth to the East India Company in 1599, and to the second charter of the colony of Virginia granted by James I in 1609 under the title of "The Treasurer and Company of Adventurers and Planters of the City of London for the First Colony in Virginia." In the east the muniment of title to the English dominion is the charter of 1599. In the west "the acorn whence the oak of English dominion has sprung" is the charter of 1609. One charter has given the world the empire of India; the other, the United States of America.¹¹¹

So that it has been said with truth, and with pardonable pride, that "if England had done nothing else in history, she might trust for her fame to the work which these charters began. And the foundations of both dominions were laid in the age which was adorned by the greatest of all her creative minds, and gave birth to the men who set on a solid basis a frame of representative government, which all the free nations of the world have copied."¹¹² From the second charter of Virginia the line of descent is traced through the third charter (1611-12), the ordinances for Virginia (1621), and so on down to the first constitution of Virginia (1776).

In 1628 Charles I granted a charter to "the governor and company of Massachusetts Bay in New England." This charter was superceded by that granted by William and Mary in 1691. The charter of 1691 transmigrated, in great part, to the constitution of Massachusetts in 1780, and the constitution of Massachusetts of 1780, in turn, powerfully influenced the federal

¹¹¹Bryce: "The American Commonwealth," volume 1, pp. 427, 428.

¹¹²"The American Commonwealth," volume I, pp. 427, 428.

constitution of 1787. As it was with Virginia and Massachusetts, so it was with the remainder of the original states. When the colonies renounced their allegiance, out of their charters were evolved their constitutions. Subsequently, when new states entered the Union, it was inevitable that they should select as their models these earlier constitutions. Thus, in brief, we have the family tree of the constitution of 1836—a constitution which is one of a group of documents which have been characterized as the oldest things in the political history of America, and her most valuable contribution to the science of government.

The constitution of 1836 possesses, it is true, a mortal body. It is equally true that, as an heir of the ages, it possesses an immortal soul. It does not fall within the scope of this paper to consider, except incidentally and inferentially, the unwritten part of the constitution. We therefore leave the soul; we take the body.

The instrument, in its obvious, material aspect, consists of a preamble and seven articles containing in all about ten thousand words. To the original instrument have been added, from time to time, twelve amendments.

"We, the people of the territory of Arkansas," thus runs the stately preamble, "having the right of admission into the Union as one of the United States of America, consistent with the federal constitution, and by virtue of the treaty of cession by France to the United States of the province of Louisiana, in order to secure to ourselves and our posterity the enjoyment of all the rights of life, liberty and property, and the free pursuit of happiness, do mutually agree with each other to form ourselves into a free and independent state by the name and style of 'The State of Arkansas,' and do ordain and establish the following constitution for the government thereof."

Article I delineates the boundaries of the State.

Here the attention of the reader of today is arrested by these words: "To be bounded on the south side of Red River by the Mexican boundary line." "By the Mexican boundary line!" The Alamo, with not a single messenger of defeat—San Jacinto—the translation of a bright, particular star to our national firmament—Buena Vista—Churubusco—the flag of our country floating on the heights of Chapultepec—what a magnificent prospect opens up!

Article II, consisting of twenty-four sections, is ushered

in by a clause declaring the object and purposes thereof, namely, "that the great and essential principles of liberty and free government may be recognized and unalterably established." Then follows, in terse and nervous language, the declaration of rights, the sound of which, like the old song of Percy and Douglas, doth move the heart "more than with a trumpet." For the words are words to conjure with. As they are pronounced, the progressive struggles to secure the primordial rights of the individual as signalized by Magna Charta, by the petition of right, by the bill of rights, by the declaration of independence—pass in glorious review before the eye of the mind.¹¹³

In articles III, IV, V and VI are fixed the frame of government.

Article III, which consists of twelve sections, declares that the government of the State shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy—those that are legislative, those that are executive, those that are judicial—and that no person, or collection of persons, being of one of these departments, shall exercise any power belonging to either of the others, except in the instances expressly directed or permitted in the constitution.

Article IV is devoted to creating the legislative department, to defining its duties, to limiting its powers, and to fixing the basis of suffrage. It is declared that the legislative power shall be vested in a general assembly which shall consist of a senate and a house of representatives; that the senate shall consist of members at least thirty years of age, chosen every four years by the qualified electors of the several districts, and that the ratio of representation in the senate shall be 1,500 free white male inhabitants until the senate amounts to twenty-five in number; that the house, the members of which shall be not less than twenty-five years of age, shall be chosen every two years, and shall be based on a ratio of 500 free white male inhabitants for each representative until the number of representatives amounts to seventy-five, with a proviso that each county shall have at least one representative; that the general assembly

¹¹³The declaration of rights consists of about eight hundred words. It is readily accessible, being found in all the digests of the laws of Arkansas.

shall meet every two years, and that vacancies in membership shall be filled at general elections; that no person (with stated exceptions) holding a lucrative office under the United States, or the State, shall be eligible to a seat in the general assembly; that each house shall appoint its own officers, determine the rules of its proceedings, shall publish from time to time a journal thereof, and that the yeas and nays upon any question shall be entered on the journal at the desire of any five members; that no senator or representative shall, during the term for which he shall be elected, be appointed to any civil office under this State which shall have been created or the emoluments increased during his continuance in office, except to such office as shall be filled by election of the people; that members of the general assembly shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during the session of the general assembly, and for fifteen days before and after such session, and that they shall not be questioned in any other place for any speech or debate in either house, and that no compensation of members shall be altered to take effect during the session at which it is made; that the house shall have the sole power of impeachment, and all impeachments shall be tried by the senate and no person shall be convicted without the concurrence of two-thirds of all the senators elected; and that, for reasonable cause which shall not be sufficient ground for impeachment, the governor shall, on the joint address of two-thirds of each branch of the legislature, remove from office the judges of the supreme and inferior courts; provided the cause of removal be spread on the journals and the party charged be notified of the same and heard before the vote is finally taken; that the sessions shall be open, except in cases requiring secrecy; that bills may originate in either house and be amended or rejected in the other; and every bill shall be read on three different days in each house unless two-thirds shall dispense with the rules, and that every bill so passed shall be signed by the president of the senate and the speaker of the house.

It further provides that the appointments of all officers shall be taken *viva voce* and entered on the journal; that the assembly shall direct by law in what courts, and in what manner, suits may be commenced against the State; that they may

prohibit the introduction into the State of any slave who may have committed any high crime in any other state or territory; that they may prohibit the introduction of slaves for the purpose of speculation or as an article of trade; may oblige the owners to treat slaves with humanity, and in the prosecution of slaves they shall not be deprived of an impartial jury, and any slave convicted of a capital offense shall suffer the same degree of punishment as would be inflicted on a free white person, and that slaves shall have counsel assigned for their defense; that the general assembly shall have no power to pass any bill of divorce, but may prescribe by law the manner in which divorces shall be granted by the courts of justice; that state officers shall be liable to impeachment, but that judgment shall not extend further than removal from office and disqualification to hold office; the party impeached being, nevertheless, liable to indictment and punishment according to law; that every free white male citizen of the United States who shall have attained the age of twenty-one years, and shall have been a citizen of the United States six months, shall be deemed a qualified elector, with a proviso excluding soldiers, seamen and marines in the army or navy of the United States; that all persons convicted of bribery, perjury or other infamous crime shall be excluded from every office of trust or profit, and from exercising the right of suffrage; so, likewise, any person convicted of offering a bribe to procure the election or appointment of any person; that all general elections shall be *viva voce* until otherwise directed by law, and shall be every two years.

The last section of the article provides that the general assembly may at any time propose amendments to the constitution as two-thirds of each house may declare expedient, which shall be published in all the newspapers published in this State three times, at least twelve months before the next general election; and if, at the first session of the general assembly after such general election, two-thirds of each house shall, by yeas and nays, ratify such proposed amendment, they shall be valid as parts of the constitution; it being further provided that such proposed amendments shall be read on three several days in each house, as well when the same are proposed as when they are finally ratified.

The subject of article V is the executive department. It provides that the supreme executive power of the State shall be vested in the governor of the State of Arkansas, who shall be elected by the qualified electors at the general election; that he shall be at least thirty years of age, a native born citizen of Arkansas, or of the United States; or, if not, then a resident of Arkansas ten years previous to the adoption of the constitution, and a resident at least four years before his election; that his term of office shall be four years, and that he shall not be eligible for more than eight years in any twelve years; that his compensation shall not be changed during his term; that he shall take care that the laws be executed; that he shall have power to grant pardons, etc., after conviction, except for treason and impeachment, and in case of treason may do so with the advice and consent of the senate; that every bill shall be presented to him for approval or rejection. If vetoed, it may be passed over his objection by a majority of the whole number of members elected by each house. There is also provision for a secretary of state elected for four years by a joint vote of both houses, and also an auditor and treasurer elected likewise for two years. This article also contains the provisions for the organization of the militia with its interestingly elaborated elective system, under which the commanding officers are chosen.

Article VI is devoted to the judicial department. It is provided that the judicial power of the State shall be vested in a supreme court, in circuit courts, in county courts and in justices of the peace. It is also provided that the legislature may vest such jurisdiction as may be deemed necessary in corporation courts, and may also establish courts of chancery. The supreme court shall have appellate jurisdiction and a general superintending control over inferior courts. It shall have original jurisdiction only in such cases as are specially provided for by the constitution.

The circuit courts have original jurisdiction, in general, over criminal cases, and exclusive original jurisdiction over felony cases. They have original jurisdiction in civil cases not cognizable before justices of the peace, and original jurisdiction in matters of contract where the sum in controversy is over one hundred dollars. They also exercise a superintending con-

trol over county courts and justices of the peace. Justices of the peace are elected by the qualified voters of each township for two years—one justice of the peace for every fifty voters, with a proviso that no township shall have less than two justices of the peace. They are given exclusive original jurisdiction in all matters of contract (except covenant) when the sum in controversy does not exceed one hundred dollars. They have no jurisdiction to try any criminal or penal offense against the State, but may examine and commit, discharge or recognize.¹¹⁴

The judges of the supreme and circuit courts are elected by a joint vote of both houses of the general assembly, a majority of the whole number being necessary to a choice. The judges of the supreme court hold for eight years, those of the circuit for four. It is declared that the compensation of the judges shall not be diminished during their terms. The county court consists of the justices of the peace, and it has jurisdiction of the local concerns of the counties. It is provided they shall elect a presiding judge to be commissioned by the governor, and he shall be judge of probate and have such jurisdiction in matters relating to estates of deceased persons and guardians as may be prescribed by law, until otherwise directed by the general assembly. It is declared the judges shall not charge juries with regard to matters of fact, but may state the testimony and declare the law. It is provided that the general assembly shall, by a joint vote of both houses, elect an attorney for the State for each circuit, whose term shall be two years. It is also provided that the electors of each township shall elect a constable for two years, that incorporated towns may have a separate constable and magistracy, and that the electors of each county shall elect one sheriff, one coroner, one treasurer and one county surveyor for the term of two years.

Article VII embraces miscellaneous provisions. The most important of these are:

¹¹⁴By amendment (article III) the general assembly shall have power to confer such jurisdiction as it may from time to time deem proper, on justices of the peace, in all matters of contract, covenants, and in actions for the recovery of fines and forfeitures, when the amount claimed does not exceed one hundred dollars, and in actions and prosecutions for assault and battery and other penal offenses, less than felony, which may be punishable by fine only.

EDUCATION.—Knowledge and learning generally diffused through a community is essential, it is declared, to the preservation of a free government, and diffusing the opportunities of education through the State is highly conducive to this end. It is, therefore, provided that the lands granted by the United States to the State for the use of schools shall be improved, and the funds derived therefrom applied to the accomplishment of the end for which they are intended. It is further stipulated that such laws be passed as will encourage intellectual, scientific and agricultural improvement, etc.

EMANCIPATION OF SLAVES.—The general assembly, it is declared, shall have no power to pass laws for the emancipation of slaves without the consent of their owners. They shall have no power to prevent emigrants to this State from bringing with them slaves. They *shall* have power to pass laws permitting slaves to emancipate themselves, saving rights of creditors and preventing them from becoming a public charge. They shall have power to prevent slaves from being brought to this State as merchandise, and also to oblige the owners of slaves to treat them with humanity. The two last clauses are also contained in article IV *ante*, which, as we have seen, contains additional provisions relative to slavery.¹¹⁵

BANKS.—It is provided that the general assembly may incorporate one state bank and such branches as the public convenience may require, which shall become the repository of the funds belonging to or under the control of the State; and shall be required to loan them out in each county in proportion to representation. Also, that they shall have power to incorporate one other banking institution calculated to aid and promote the great agricultural interests of the country; and the faith and credit of the State may be pledged to raise the funds necessary to carry into operation the two banks, with a proviso that such security can be given by the individual stockholders as will guarantee the State against loss or injury.

Among other general provisions were these: That all revenue shall be raised by taxation to be fixed by law; that all property subject to taxation shall be taxed according to its value, and that no species of property shall be taxed higher

¹¹⁵Section 25, article IV.

than another species of property of equal value; that treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort, and that no person shall be convicted of treason unless on the testimony of two witnesses of the same overt act, or his own confession in open court; that no person who denies the being of a God shall hold any office in the civil department of the State, nor be allowed his oath in any court; that no money shall be drawn from the treasury but in consequence of an appropriation by law, nor shall any appropriation of money for the support of an army be made for a longer time than two years, and a regular statement of the receipts and expenditures of all public money shall be published with the promulgation of the laws; that no lottery nor sale of lottery tickets shall be allowed; that internal improvement shall be encouraged and the general assembly shall provide for ascertaining proper objects of improvement in relation to roads, canals and navigable waters, and to provide for proper application of the funds appropriated therefor; that, within five years after the adoption of the constitution, the laws shall be revised, digested, arranged and promulgated, and that a like revision, etc., shall be made every ten years thereafter; that the person of a debtor, except when there is a strong presumption of fraud, shall neither be imprisoned nor continued in prison after delivering up his estate for the benefit of his creditors.

THE SCHEDULE.—Provides for making the necessary transition to statehood, and declares that elections shall be held in the several precincts on the first Monday in the following August for a governor, a representative in congress, for senators and representatives to the next general assembly, clerks of the circuit and county courts and other county officers, and that the general assembly so elected shall be held on the second Monday of September.

Of the twelve amendments the most significant are these:

Article I (ratified November 17, 1846). "No bank or banking institution shall be hereafter incorporated or established in this State."

Article V (ratified November 24, 1848). "That the quali-

fied voters of each judicial circuit in the State of Arkansas shall elect their circuit judge.”

Article VI (ratified November 24, 1848). “That the qualified voters of each judicial circuit shall elect their prosecuting attorney for the State.”

Article VII (ratified November 24, 1848). “That the qualified voters of each county shall elect a county and probate judge.”

Article XII (ratified February 12, 1859). * * * “The State of Arkansas shall not be sued in any of its courts.”

An examination at this point of the comparative anatomy (incomplete though it may be) of as many of the constitutions of the states of the Union as the available space will permit, will, perhaps, assist the reader in making a just appraisal of our first constitution.

For the purpose of the study, I shall select the Virginia constitution of 1776, that of Massachusetts of 1780, that of Arkansas of 1836, and the present constitution of Arkansas (1874).

Excepting New Hampshire’s slight and provisional instrument of January 5, 1776, the constitution of 1776 of the Old Dominion is earliest of American state constitutions. The declaration of rights was passed June 12, 1776; the constitution followed on June 29, 1776. The entire instrument contains not exceeding 3,500 words. Of this, the historic bill of rights, written by the celebrated George Mason, occupies one-fourth. The terrific indictment of George III, by Jefferson, which so clearly prefigures the great declaration of the following month, occupies another fourth. The remaining 1,800 words, or thereabouts, suffice to provide a frame of government, consisting of three separate and distinct departments—the legislative, executive and judicial.

The legislature is composed of a house of delegates and a senate, to be elected by the qualified electors. The house is elected annually, the senate every four years. All laws must originate in the house. The senate must either approve or reject money bills. All other bills it may either approve, reject or amend. There is a property qualification both for holding office and for the exercise of the elective franchise.

The executive consists of a governor and privy council—

all chosen by the legislature, which also chooses the treasurer. The governor is authorized to appoint justices of the peace, and they, in turn, appoint constables. The judiciary is appointed by the legislature. The clerks of the courts are appointed by the court. Some of the salient characteristics of this constitution are its brevity; the limitation of the elective franchise; the omnipotence of the legislature; the impotence of the executive. The paper is also honorably distinguished by its passion for religious freedom, as exemplified in the sixteenth section of the declaration:

“That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction—not by force and violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love and charity towards each other.”

The constitution of Massachusetts of 1780, while much changed by numerous amendments, has never been superceded. It is the oldest of all existing state constitutions. The paper, although of considerable length for that day, consists of a preamble and two parts only. The instrument fitly characterizes itself as “A Declaration of Rights and Frame of Government.”

Part first consists of a declaration of rights. Part second contains the frame of government, providing for separate legislative, executive and judicial departments, “to the end it may be a government of laws and not of men.”¹¹⁶

The legislature consists of a senate and a house, each elected annually. The members are required to possess property qualifications, and the representation from the senatorial districts is based on the wealth of the districts.

The executive power is vested in a governor elected by the people, and in a council chosen by the legislature from the senate. The governor is clothed with the veto power.

All judicial officers are appointed by the governor with the advice of the council. They are to hold during good behavior, but may be removed by the governor with the consent

¹¹⁶Compare remarks of Edmund Pendleton in the Virginia convention of 1788, which ratified the federal constitution, where, in speaking of that constitution, he said: “It is, on the whole complexion of it, a government of laws, not of men.” (3 Elliott’s Debates, p. 39.)

of the legislature on address of the legislature. The elective franchise is based on a property qualification. The limitations on the power of the legislature are few, and there are hardly any special provisions.

A religious establishment is imposed and religious tests required as a qualification for office.

As the constitution of Virginia is exalted by its passion for freedom of conscience, so the constitution of Massachusetts is exalted by its love of learning. It is, therefore, declared that literature should be encouraged, colleges fostered and public and grammar schools cherished in the towns, etc.

Some of the features of this constitution will be seen to be these: A property qualification for the elective franchise; an absence of detail; a somewhat greater power vested in the executive than the Virginia constitution gives; a somewhat greater independence of the judiciary; all at the expense of the legislature, whose powers still remain almost boundless.

When we come to compare the constitution of 1836 of this State with those two venerable instruments which preceded it by nearly two generations, we find that, in it, as in them, a bill of rights declaring the primordial rights of the citizen is a prominent characteristic; that the distribution of powers between the legislative, the executive and the judicial is preserved; and also that the legislative department is bicameral. Indeed, all these features may be considered fundamental and characteristic of the American state constitutions. With this, speaking broadly, the identities end. In the Arkansas constitution all property restrictions on the right of suffrage are removed. In it, the legislative power, while still very great, is perceptibly curtailed—a curtailment which continues progressively under the amendments to the original instrument. On the other hand, the power of the executive is much greater than that of the Virginia executive, and somewhat greater than that of the Massachusetts one. The independence of the judiciary is somewhat better guarded than in the constitution of Virginia, but hardly so well so as in that of Massachusetts. A growing tendency is also discernible to break away from the earlier conception that a constitution should consist only of a bill of rights and frame of government. Accordingly, in our earliest state

constitution we find a number of provisions not of a fundamental nature.

We now pass from the Arkansas constitution of 1836 to that of 1874. The various tendencies disclosed in the document of 1836 are seen to have gathered strength with the passage of the years. The constitution of 1874 is considerably more than twice as long as that of 1836. The two are alike in this—that in neither is there any restriction based on property qualifications.¹¹⁷ They are unlike in this—that the cataclysm of war has removed in law all discrimination founded on race.

Thus, the basis of suffrage is much widened—widened at the expense, most unfortunately, of far more essential things. The minimum age limit for qualifications for holding many offices is considerably lowered, thus enlarging the field of selection.

The legislative wings, the tips of which were, a generation earlier, clipped, are now cut deeply by numerous constitutional prohibitions.¹¹⁸

In the executive department we find that the office of attorney general has been created, and that, furthermore, while under the constitution of 1836 all state officers except the governor were elected by the legislature, under the constitution of 1874 they are, without exception, elected by the qualified electors of the State. Furthermore, the governor's term now is only two years, and he is eligible for reëlection without limit.

¹¹⁷Unless we choose to consider that clause of the second amendment to the constitution of 1874, which requires the elector to exhibit a poll tax receipt as a condition precedent to the exercise of the franchise, as constituting a reversion.

¹¹⁸It must, however, be mentioned that, under the decisions of our supreme court, the limitations on the enactment of local laws have become mere parchment ones, over which the legislature vaults with amazing agility.

Compare Governor Morris' caustic remarks: "But, after all, what does it signify that we have a written constitution containing unequivocal provision and limitations? The legislative lion will not be entangled in the meshes of a logical net. The legislature will always make the power which it wishes to exercise unless it be so organized as to contain within itself a sufficient check. Having sworn to exercise the powers granted, according to their true intent and meaning, they will, when they feel a desire to go farther, avoid the shame, if not the guilt, of perjury by swearing the true intent and meaning to be, according to their comprehension, that which suits their purpose."

In the judiciary department the most radical innovation is, that, under the present constitution, all judges, as well as prosecuting attorneys, are elected by the people; whereas, under the first constitution, prior to the adoption of the amendments thereto, they were elected by the legislature. The judge of the county court, who is also ex-officio judge of the probate court, is also elected by the people. Under the constitution of 1836 he was chosen by the various justices of the peace from among their number. Under the constitution of 1874 the jurisdiction of the justices of the peace is materially enlarged. In passing, it may be noted, as illustrating the tendency of the modern constitution to descend into minutiae, the added requirements imposed under the constitution of 1874 for qualification of members of the judiciary.

Another feature of the constitution of 1874 which challenges attention is the great number of additional topics dignified by a place in the fundamental law. Among these new creations are the following:

EXEMPTIONS (ARTICLE IX).—This article in 600 or 700 words evidences the growing solicitude for the interests of the debtor, and a fixed policy by which the home is safeguarded from invasion.

AGRICULTURE, MINING AND MANUFACTURING (ARTICLE X).—It is here provided that laws shall be passed to foster these interests; that the office of state geologist may be created, and that capital invested in mining and manufacturing may be exempted from taxation for seven years after the ratification of the constitution.

MUNICIPAL AND PRIVATE CORPORATIONS (ARTICLE XII).—With the exception of the provision for the two banks, this title is practically nonexistent in the constitution of 1836. In that of 1874 it becomes a swelling theme of 800 words in twelve sections, in which provision is made for the creation of these soulless things and limitations are imposed on the exercise of their powers.

EDUCATION (ARTICLE XIV, AMENDMENT 8).—Provision is made here for a system of free schools. The specific requirements of this article may be compared with the glittering generalities of article VII, constitution of 1836.

FINANCE AND TAXATION (ARTICLE XVI—Also Section 23, Bill of Rights).—This important subject is considerably expanded. In some directions the legislative power to tax is abridged; in others it is prohibited from exempting from taxation.

RAILROADS, CANALS AND TURNPIKES (ARTICLE XVII, ARTICLE XIX, SECTION 18, AMENDMENT 5).—It is declared that they (railroads) shall be public highways and common carriers; and in thirteen sections their rights, duties and liabilities are defined. There is deep significance in the fact that the word "railroad" does not occur in the constitution of 1836, and that all that relates to cognate subjects is contained in one short section of the earlier instrument—Article VII, section 6.

MISCELLANEOUS PROVISIONS.—This is article XIX and consists of twenty-seven sections. The parallel head in the constitution of 1836 is entitled "General Provisions," and consists of ten sections.

Among the special added provisions in the constitution of 1874 is the prohibition against dueling and the prohibition against usury.

It may be said, generally, of this article that it emphasizes the tendency of constitutions to develop into codes. It contains numerous clauses not only prohibiting the doing of many things in *any* way, but also directing the way in which many other things *shall* be done. Thus the administrative feature grows more and more prominent.

METHOD OF AMENDING THE CONSTITUTION.—In the constitution of 1874 amendments are proposed by the legislature, but they are passed upon by the electors direct, and either approved or rejected by them.¹¹⁹

In the constitution of 1836 they are not only proposed, but ratified or rejected by the legislature itself.¹²⁰

While it is true these amendments are acted upon by a legislature, the members of which are elected by the people at an election held subsequent to the time the amendments are proposed, it is clear, nevertheless, that the present constitution

¹¹⁹Article 19, section 22.

¹²⁰Article 4, section 35.

is more nearly democratic, in respect to amendments, than the old one was.

As further illustrating the code-like tendency manifested in the constitution of 1874, reference may be made to the provision relating to sealed and unsealed instruments (schedule, section 1), and provisions relative to the competency of witnesses (schedule, section 2). There are, however, two provisions in the constitution of 1836, the absence of which in that of 1874 is of deep import.

It is hardly necessary to say that one of these relates to slavery. It was wiped out by the red hand of war, and its passing is recorded tersely in the constitution of 1874, thus:

“There shall be no slavery in this State, nor involuntary servitude except as a punishment for crime.”¹²¹

“Equality of all persons before the law is recognized, and shall forever remain inviolate; nor shall any citizen ever be deprived of any right, privilege or immunity, nor exempted from any burden or duty on account of race, color or previous condition.” (Sec. 3, Declaration of Rights.)

The other clause in the earlier instrument, conspicuous by its absence in the later one, is that providing for the two banks—a Pandora’s jar, out of which came nothing but

“Ruin on ruin, rout on rout.
Confusion worse confounded.”

The lid was closed by the first amendment to the constitution of 1836 (ratified November 17, 1846) and the people of the State never ventured to open it again. Instead, the legislature under the present constitution is prohibited from passing special acts conferring corporate powers except for charitable, educational, penal or reformatory purposes; and it is declared that corporations must be formed under general laws, the legislature reserving the power to alter or repeal them. It is further declared that the State shall never become a stockholder in, or subscribe to, or be interested in the stock of any corporation, or assume any corporate liability, except where the liability has been created to repel invasion, etc.

Summarizing much of what precedes; if the revolutionary constitutions of Virginia and Massachusetts be taken as the

¹²¹Section 27, article 2, Declaration of Rights.

point of departure, and the stream of political, economic and social tendencies be traced down through the Arkansas constitution of 1836 as typical of *its* era, and thence down through the Arkansas constitution of 1874 as typical of *its* era, we think that the following general conclusions are fairly deducible therefrom:

First: There has been an unmistakable and unbroken trend toward the more complete democratization of our political institutions.

This is made manifest by the removal of practically all property qualifications as a condition to the exercise of the elective franchise, and by the enormous increase of subjects which, by the terms of the fundamental law, are withdrawn from the legislative competency, and which thus remain with the people to be acted upon by them at their pleasure.

Second: This democratization has progressed at the expense of the legislative department entirely.¹²²

In the revolutionary era, the legislature was, as we have seen, the direct representative of the people, a kind of *alter ego*, and hence, practically no limitations were imposed on it by the earlier constitutions. Madison, standing in the Philadelphia convention of 1787, said: "Experience proves a tendency in our governments to throw all power into the legislative vortex. The * * * legislatures are omnipotent."

This marked tendency by the sovereign people to curb "the legislative lion" is made manifest in a great variety of ways.

Speaking broadly, the present limitations on the legislative competency are grouped under two heads: (a) Many subjects are withdrawn from the sphere of legislative action. (b) Various hampering restrictions are placed on the procedure, touching topics which are still permitted to remain within its province.

Third: Another manifest development has been the rise

¹²²A signal illustration of the tendency noted in the text is furnished by the initiative and referendum amendment added (since this paper was prepared) to the present constitution. I know of no more impressive way of demonstrating how vast is the power, and how wide is the sweep, of the movement than to call attention to the fact that the principle of the initiative and referendum goes far beyond anything which Jefferson—the very incarnation, in his day, of the spirit of democracy—would probably have recognized or approved.

of the executive power. In the days of the fathers, the governor was generally the creature of the legislature. Usually elected by it, if not shackled by a council which was, rarely did he possess that defensive weapon—the veto. The figure of George III loomed big and full of menace; and so, naturally, the executives of the states in those times were made, as Madison said, “little more than ciphers.”

At present the governor holds his commission directly from the people; his appointing power is somewhat enlarged; and, almost invariably, he has the veto.

Fourth: When we come to the judiciary we find that, whereas, while almost without exception, in the earlier days of the Republic, the judges were either elected by the legislature or appointed by the governor by the advice of the council, they are now, in far the greater number of states, elected directly by the people. Opinions may differ as to the desirability of all this. I state the fact as illustrative of the waning power of the legislature, and of the growing impetus toward a complete democratization of our political institutions.

Fifth: Another conclusion is that our modern civilization is becoming rapidly more complex, as is made manifest by the intrusion within the sphere of governmental functions of objects never dreamed of by our ancestors.

This intrusive force, coöperating with the marked trend toward a pure democracy, and the no less marked resultant fixed purpose of the people to manacle their representatives, leads inevitably, as a tangible result, to extremely long and complicated constitutions of government.

The early concept of the state constitution was a declaration of rights and a simple frame of government.

This was its *Alpha* and *Omega*.

Thus, in *State vs. Ashley*, 1 Ark., 513, it is said:

“By an inspection and examination of all the state constitutions of our own country they will be found to be nothing more or less than so many bills of rights, declaratory of the great and essential principles of civil and political justice, imposed as so many duties, and enjoined as so many restrictions, upon the departments of the government, and upon the people.”

A tendency in the constitution of 1836 to depart from this early austere simplicity was noted with regret by an accom-

plished jurist (himself one of the framers of the instrument) in another one of our old cases. Says Judge Lacy in County of Pulaski vs. Irwin, 4 Ark., 473:

"One of the weightiest objections that can be urged against our constitution is that it is a code of laws in detail, rather than a bill of rights of cardinal or general principles."

This inclination toward prolixity and complexity has proceeded, from that day to this, with an accelerated velocity, so that, in general, it may now be affirmed that while "our fathers settled, or tried to settle, on what principles government should be founded, we are settling, or trying to settle, on what principles government should be administered."

As a final generalization, marking the close of my paper, I venture the statement that, midway between the revolutionary documents and our last constitution, stand, in formal structure and in its essential spirit, the constitution of 1836. Alike in this, that they are each of them part of all that has been, they are, nevertheless, differentiated from each other by "the form and pressure of the age" in which each was enacted. So that, while they are all of them heirs to the accumulated wisdom and experience of the preceding ages, each is still, in a very real sense, the child of the era in which it took concrete form.

SUFFRAGE IN ARKANSAS.

BY JOSEPH T. ROBINSON.¹

PRE-TERRITORIAL SUFFRAGE.

The history of suffrage in Arkansas began with the admission of Arkansas as a territory in 1819. Actual suffrage, however, began with the year 1812, when the district of Arkansas was a part of the territory of Missouri, and was exercised in the selection of delegates and members of council to the legislature of Missouri, and in the election of sheriffs and clerks in Arkansaw County first, and afterward in Clark, Hempstead, Lawrence and Pulaski, the old Missouri counties. It was also exercised in the selection of a delegate to congress from Missouri. Records of the number of votes cast at Arkansaw Post and other Arkansas towns are still extant, but none of the poll books, tally sheets or returns are in existence. The basis of this suffrage was that of free white manhood suffrage, but not universal, with a limited number of restrictions as to age and residence, and with the payment of some sort of territorial or county tax.

TERRITORIAL SUFFRAGE.

The act creating the Territory of Arkansas was passed March 2, 1819, and went into force July 4 of the same year. The governor, secretary, marshal and superior court judges were all appointive, but provision was made in the act for the election of a territorial legislature, which in turn created other offices and provided for their incumbency. The language of the na-

¹Joseph Taylor Robinson, son of Dr. James Robinson and Matilda J. Robinson, was born in Lonoke County, Arkansas, August 26, 1872. He was educated in the common schools of the county and at the University of Arkansas. After taking a law course he entered the legal profession and soon built up a large practice. He was a member of the legislature in 1893 and was presidential elector in 1900. He was the electoral messenger in 1901. Mr. Robinson has ever taken an active part in politics, and in 1902 was elected to congress, entering upon the duties of his office March 4, 1903. He is now serving his fifth term.

tional act of March 2, 1819, pertaining to the selection of the territorial legislature and suffrage reads as follows:

"Sec. 6 (Act of March 2, 1819). And be it further enacted that so much of the act of congress of the 4th of June, 1812, entitled, 'An act providing for the government of the territory of Missouri as relates to the organization of a general assembly therein, prescribes the powers and privileges thereof, of the members thereof, the mode of election, and periods of service of the members thereof, and defines the qualifications and privileges of the electors and elected,' shall be in force and operation in the Arkansas territory to the extent of its application, so soon as the governor thereof shall be satisfied that such is the desire of a majority of the freeholders thereof, and not until then.'"

The qualifications of electors and, in fact, the whole question of suffrage was thus thrown back upon the act creating the territory of Missouri. Referring to the act of June 4, 1812, we find a part of section 6 thereof reading as follows:

"That all free white male citizens of the United States above the age of twenty-one years, who have resided in said territory twelve months next preceding an election, and who shall have paid a territorial or county tax, assessed at least six months previous thereto, shall be entitled to vote for representatives to the general assembly of said territory."

Such were the requirements for suffrage in the old Missouri counties from 1812 to 1836 as prescribed by congress for representatives and by the Missouri and Arkansas legislatures for county officers.

The territorial and county taxes upon which suffrage was based in the Territory of Arkansas were as follows in the year 1820: Territorial: 60c on every 100 acres of land, 30c on every \$100.00 value in town lots, 62½c on every slave above ten years of age, \$15.00 on every house used as a store for six months, and \$20.00 per annum for peddling. County taxes were: 31¼c on every horse or mule above three years of age, cattle of the same age 10c each, \$1.00 for every slave between sixteen and forty-five years, \$30.00 for every billiard table, \$1.00 for every able-bodied single man not having property of \$200.00 value, \$1.00 on every \$100.00 value in sawmills, tanyards and distilleries, 50 per cent of the money proposed to be distributed by every lottery, and \$50.00 for a tavern license for one year. Ferries were taxed, but the rate was left to the courts; grist-

²Annals of Congress, fifteenth congress, second session, part 2, p. 2502.

³Annals of Congress, twelfth congress, first session, p. 2310.

mills were taxed the same as sawmills until October 20, 1820, when they were exempted.⁴

Professor Shinn, in speaking of this bachelor tax, said:

"As a fiscal provision for revenue it was a failure; as an incentive to the creation of \$200.00 estates it was also a failure; its only advantage was sociological in the increased number of early marriages, for among certain classes it is always considered easier to marry than to pay a dollar's tax or create even the most trifling estate."

Certain it is that the early settlers of Arkansas knew nothing of universal white manhood suffrage. Suffrage was based on the possession of property and the payment of taxes thereon. We now come to the first material change in the qualifications for suffrage.

STATE SUFFRAGE.

On January 30, 1836, the convention adopted the first constitution of the new state. Article IV, section 2 of that instrument defined the qualifications of electors as follows:

"Every free white male citizen of the United States who shall have attained the age of twenty-one years and who shall have been a citizen of this State six months shall be entitled to vote in the county or district where he actually resides for each and every office made elective under this State or under the United States; provided, that no soldier, seaman or marine in the army or navy of the United States shall be entitled to vote at any election within this State."⁵

The only material difference between the qualifications imposed by congress in the act of 1819 and those imposed by the people through their delegates in convention and afterward by their votes as freemen was in striking down the prepayment of a tax of some kind as a condition precedent to the exercise of suffrage.

Suffrage was exercised under these conditions from 1836 to 1861. In March, 1861, the second constitution of the State was framed, and in article IV, section 2 of that instrument the qualifications for suffrage were outlined in identical words with those of the constitution of 1836, except that the words "every free white male citizen of the United States" were

⁴Session Acts, Arkansas Territorial Legislature, 1820.

⁵Sandels & Hill's Digest of the Statutes, p. 130.

changed to "every free white male citizen of the Confederate States of America."⁶

THE CONSTITUTION OF 1864.

The third constitution of the State contained in article IV, section 2, the following:

"Every free white male citizen of the United States who shall have attained the age of twenty-one years, and who shall have been a citizen of the State six months next preceding the election, shall be deemed a qualified elector and be entitled to vote in the county or district where he actually resides, or in case of volunteer soldiers, within their several military departments or district, for each and every office made elective under the State or United States; provided, that no soldier, seaman or marine in the regular army or navy of the United States shall be entitled to vote at any election within the State in time of peace; and provided, further, that anyone entitled to vote in this State in the county where he resides may vote for the adoption or rejection of this constitution in any county in this State."⁷

So far but one material change has been made in the qualifications of electors, and that was the refusal of the people in 1836 to place the limitation of a tax payment on the elector. From 1812 to 1868 the material and unchanged qualifications were (1) that the elector be free; (2) that the elector be white; (3) that the elector be a male; (4) and that the elector be twenty-one years of age. The requisite of residence was also unchanged, but the periods of the requisite varied in the different instruments.

We now come to a change of the great qualifications so as to eliminate the word "white" from the category and to enlarge the suffrage so as to include males of every color, but especially the liberated blacks, who at this particular juncture were needed by the Republican party in order to perpetuate its power. The enfranchisement of the blacks, however, was not deemed sufficient to accomplish this purpose and the qualifications of white electors were therefore changed so as to disfranchise Confederate soldiers and sympathizers. Backed by the army of the United States, a constitution enfranchising the blacks and disfranchising certain whites was adopted and remained in force six years.

⁶*Ibid.*, p. 147.

⁷*Ibid.*, p. 161.

THE CONSTITUTION OF 1868.

The convention which formed the constitution of 1868 was convened under two acts of congress providing for the more efficient government of the rebel states, passed respectively March 2 and March 23, 1867, over the veto of the President of the United States, and under orders issued from headquarters of the fourth military district of the United States. The act of March 2, 1867, provided that when the people of any one of the seceding states shall have formed a constitution framed by a convention of delegates elected by the male citizens of said state twenty-one years old and upward, of whatever race, color or previous condition, who have been resident in said state for one year previous to the day of such election, except such as may be disfranchised for participation in the rebellion, or for felony at common law; and when such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for election of delegates, and certain other things, said state should then be declared entitled to representation in congress.⁸

The act of March 23, 1867, required the commanding general of each military district before the first day of September, 1867, to register all the male citizens twenty-one years old and upward, excluding all those who refused to take the iron-clad oath of allegiance to the United States; and afterward to give thirty days' notice to all registered voters of an election for delegates to a convention to frame a new constitution. The commanding officer was to superintend the registration of voters, the election of delegates to the convention and the election for the ratification of the constitution as formed.⁹

By a supplementary act of congress passed July 19, 1867, the commanding officer was made a military dictator in his district, with power to remove any officer, civil or military, appointed by any state government and fill the vacancy with such person as he might name. It gave the officers of the boards of registration power to override the oath of the registrant and to disfranchise citizens *ad libitum*. It also defined the iron-clad

⁸Debates and Proceedings of the Arkansas Constitutional Convention, 1868, p. 18.

⁹Ibid., pp. 20, 21.

oath and made it impossible for a very large proportion of the old citizens of the state to register. It also gave the boards of registration power to sit fourteen days later and revise the lists for five days.¹⁰

Shinn, in his History of Arkansas, says that the program consisted of three steps: (1) To register certain white voters out; (2) to revise them out; and (3) to count them out. In this way was the suffrage qualification changed in Arkansas.

Between April 1 and September 26, 1867, General Ord took the registration of Arkansas provided for by these acts, and on September 26, 1867, by general order No. 31, dated at Vicksburg, Mississippi, ordered an election to begin on the first Tuesday of November to decide whether a convention to frame a constitution of Arkansas should be called. The election was held by registrars appointed by the general who were in the main the same persons who made the registration.¹¹

On December 21, 1867, General Ord, by general order No. 43, dated at Holly Springs, Mississippi, proclaimed that the Arkansas electors had declared for a convention by a vote of 27,576 for convention, to 13,558 against. Of the 66,805 votes registered, only 41,134 were cast, and of the 27,576 cast for the convention the larger part thereof were negroes.¹²

A convention was therefore ordered by the general assembly to meet at Little Rock on January 7, 1868, to form a constitution.

Article VIII of the constitution formed by the convention contained seven long sections devoted to the franchise, and must not be confused with the same article as it now appears in Kirby's Digest. The Republicans in 1873 became dissatisfied with article VIII as it was originally drawn and adopted, and by amendment reduced it to the form it now holds in the digest. As originally drawn, every male citizen naturalized or who had declared his intention, twenty-one years of age and upward, who had resided in the State six months and who actually resided in some county, was declared an elector. This enfranchised the blacks under Arkansas constitutional provisos and confirmed to them the right already claimed under the acts of congress named and the orders of the military department.

¹⁰*Ibid.*, p. 25.

¹¹*Ibid.*, p. 30.

¹²*Ibid.*, p. 33.

The constitution in its third section debarred the following classes from registering, voting or holding office:

1. Those who during rebellion took the oath of allegiance and afterward gave aid, comfort or countenance to the southern cause.
2. Those disqualified as electors in the states from whence they came.
3. Those who during the war violated the laws of civilized warfare.
4. Those disqualified by the proposed fourteenth amendment, or by the decision of the Arkansas registrars who conducted the election calling the convention under the reconstruction acts of congress.
5. Those guilty of crime.
6. Idiots and insane.

A catch bait proviso was added to this section which made all those in sub-classes 1, 2, 3 and 4 qualified electors who should openly advocate or vote for the reconstruction acts of congress. This constitution had a very short life.

CONSTITUTION OF 1874.

Article III of the constitution adopted September 7, 1874, deals with the franchise and elections. Section 1 of that article is as follows:

"Every male citizen of the United States, or male person who has declared his intention of becoming a citizen of the same, of the age of twenty-one years, who has resided in the State twelve months and in the county six months next preceding any election, where he may propose to vote, shall be entitled to vote at all elections by the people."¹³

Section 2 is, however, equally important with section 1. It reads as follows:

"Elections shall be free and equal. No power civil or military, shall ever interfere to prevent the free exercise of the right of suffrage; nor shall any law be enacted whereby the right to vote at any election shall be made to depend upon any previous registration of the elector's name; or whereby such right shall be impaired or forfeited, except for the commission of a felony at common law, upon lawful conviction thereof."¹⁴

This constitution is in force today.

¹³Sandel and Hill's Digest, p. 63.

¹⁴Ibid., p. 64.

The next change in the suffrage was made by amendment No. 11, article XXI, of the constitution of 1874. This amendment was a limitation on the universality of section 1, article III, of the constitution. The amendment limited the suffrage to males twenty-years old and upward, who have paid the poll and all other taxes demanded by law. This amendment operates against all males, white or black, entailing no hardship upon either. The poll tax is small and goes to the support of the common schools, and any man who takes so little interest in the State's welfare as to refuse to pay his poll tax should be debarred from suffrage.

LEGAL STATUS OF NEGROES IN ARKANSAS BEFORE THE CIVIL WAR.

BY JACOB TRIEBER.¹

To preserve the equilibrium in the representation in congress and the electoral college between the free and slave states, it became a custom to admit into the Union as states two at the same time, one free and the other a slave state. In conformity with this custom congress in 1836 admitted as states into the Union Arkansas and Michigan, the former a slave and the latter a free state.

The constitution adopted by the new State of Arkansas legalized slavery which had existed in the territory up to that time. Section 25, article IV of the constitution provided:

"The general assembly shall have power to prohibit the introduction of any slave or slaves for the purpose of speculation or as an article of trade or merchandise; to obligate the owners of any slave or slaves to treat them with humanity; and in the prosecution for any crime shall not be deprived of an impartial jury; and any slave who shall be convicted of a capital offense shall suffer the same degree of punishment as would be inflicted upon a free white person and no other; and courts of justice before whom slaves shall be tried shall assign them counsel for their defense."

Section 1 of Article VII was as follows:

"The general assembly shall have no power to pass laws for the emancipation of slaves without the consent of the owners; they shall have no power to prevent immigrants to this State from bringing with them such

¹Jacob Trieber was born in Germany, October 6, 1853. He received an elementary education in his native country. He came with his parents to the United States in 1866. He attended school two years at St. Louis, and in 1868 moved to Helena, Arkansas, where he resided until 1897, when he moved to Little Rock to enter upon the duties of the office of United States attorney for the eastern district of Arkansas. Judge Trieber was admitted to the bar in 1875 and practiced his profession until 1900, when he was appointed United States district judge for the eastern district of Arkansas. He was a member of the Masonic order, and in 1906 was elected grand master of the grand lodge of Arkansas. He is a contributor to the American Law Review and other law journals. For six years he was a member of the faculty of the Arkansas Law School, lecturing on federal jurisprudence.—EDITOR.

persons as are deemed slaves by the laws of any one of the United States; they shall have power to pass laws to permit owners of slaves to emancipate them, saving the right of creditors and preventing them from becoming a public charge. They shall have power to prevent slaves from being brought to this State as merchandise, and also to obligate the owners of slaves to treat them with humanity."

In conformity with these provisions of the constitution, the code of laws adopted by the first general assembly which met after the adoption of the constitution, and which is known as the Revised Statutes of the State of Arkansas of 1838, and also as the Digest of 1838, provided for the regulation of slaves and slavery and also of free negroes. It prohibited bringing into the State any slaves who had committed a crime which would under the laws of this State be a felony or infamous crime; or any slave who had been convicted of a felony or infamous crime; or any slave who had been convicted of an infamous crime in this State and ordered to be taken out of the State; or any person, or the descendants of any person, who had been imported into the United States in contravention of the laws of the United States and held as a slave. Owners were prohibited from hiring one slave to another slave or to any free negro, or to permit a slave to go at large upon the hiring of his owner, or to act or deal as a free person. Free negroes, although there was no statute on the subject, were not permitted to own slaves, the supreme court of the State holding that such a privilege was against public policy. Slaves were prohibited to sell, barter or deliver intoxicating liquors; for slaves to harbor or conceal runaway slaves or one who has absented himself without permission of his master was made an offense; nor were they permitted to leave the premises of the master without a written pass. To go upon the plantation of another person than that of the master without permission in writing from the owner was prohibited.

Guns or weapons in the possession of a slave without the written permission of a master were subject to confiscation, and the slave having them in possession subject to punishment. Riots, routs, unlawful assemblies and seditious speeches of slaves were to be severely punished. For a master or overseer knowingly to permit a slave not belonging to him to remain on his premises more than four hours at one time without the consent

or permission of the owner was subject to fine. Nor could the owner permit more than five slaves other than his own to be on his premises at one time with or without the consent of the master of the slaves. For a white person or a free negro to be found in the company of slaves or for them to harbor or entertain any slaves or be found drinking or gaming with them without the consent of the owner was subject to a fine and corporal punishment. To guard against escapes owners and masters of steamboats or other vessels were prohibited from carrying any slaves out of the State without the consent of the owner; no person was permitted to buy, sell or receive from a slave any commodity whatever without the consent of the master; no free negro or mulatto was permitted to immigrate to or settle in this State unless he filed with the county clerk of the county in which he desired to settle a certificate of his freedom and a bond for his good behavior, and that he would not become a charge on the county. To employ, harbor or conceal a free negro who had not complied with the above named provisions of the statute was made a misdemeanor. To bring into the State a free negro without having a lawful certificate of his freedom was prohibited; free negroes were not permitted to keep any gun, rifle or weapon of any kind, or ammunition, without first obtaining a license therefor.

Ample provisions were made for the capture of runaway slaves. Slaves could, with the consent of the owner, labor for themselves on Sunday without being subjected to punishment for violating the Sabbath laws, if it was done without coercion of the master and for the sole use and benefit of the slave. For a master to compel a slave to labor on the Sabbath, except the performance of the customary household duties of daily necessity, comfort or charity, was made an offense.

County courts were empowered to appoint patrols in each township, whose duty it was to visit all places suspected of unlawful assemblages of slaves, and the patrol was authorized to inflict summarily, without the judgment of any court or magistrate, not exceeding twenty lashes on any slave found at such assembly or strolling about from one house or plantation to another without a pass from his master or overseer. A white person caught in company with negroes in the night time, in

suspicious places, was to be arrested by the patrol, taken before a magistrate, and if there was reasonable cause for believing him guilty, was to be committed to jail for trial at the next term of the circuit court, and if convicted by a jury, receive the same punishment that would be inflicted on the slave, *i. e.*, not exceeding twenty lashes.

In the prosecution of slaves for crimes they were entitled to an impartial jury, and when convicted of a capital offense were to receive the same punishment as white persons. For certain other crimes, manslaughter, maiming, kidnaping, arson, burglary or robbery, they were to be punished by confinement in the penitentiary, but for all other offenses only corporal punishment was to be inflicted. This was, no doubt, for the reason that confinement in prison would be punishment of the innocent master. Masters were held civilly liable in damages for all wrongful acts of their slaves. This was based upon the legal maxim of *respondeat superior*. Free negroes were tried and punished in the same manner as white persons, except that negroes were competent witnesses to testify for or against them, while in criminal cases against white persons or in civil actions in which one or all the parties were white persons, negroes were incompetent to testify. No negro, slave or free, could testify in the courts in civil actions except where all the parties to the action were negroes. In criminal cases against slaves, where the charge was a felony, they were competent to be witnesses for and against the accused.

Slave owners were permitted to emancipate slaves either by last will and testament or by deed (this was forbidden by an act of the legislature of 1859 hereinafter set forth), provided the rights of creditors were not affected thereby, but the person emancipating a slave had to support and maintain him when the slave was not of sound mind or he was above the age of forty-five years; or if a male under the age of twenty-one years, or a female under the age of eighteen years. Slaves were treated for most purposes as personality, but when conveyed, given freedom or distributed under the laws governing descent, or when sold under execution, were to be governed by the laws affecting realty.

Gradually, as the population of the State increased and

as more slaves were brought into it, more strict laws were enacted. Free negroes were prohibited from immigrating to the State after the first day of March, 1843. By an act approved January 20, 1843, free negroes then in the State were required to enter into bond for their good behavior, and that they shall not become a charge upon the county as paupers, and also to pay any damages which may be sustained by others by reason of their unlawful acts or misconduct. Upon conviction for a failure to comply with this act they were to be hired out for a sufficient length of time to pay the fine imposed on them, and, upon the expiration of that time, deported from the State. If a free negro was brought into the State as a servant he could remain without such bond for three months, provided he continued in the service of the person who brought him to this State. As many free negroes seemed to have failed to comply with the provisions of the act of 1843 requiring them to enter into bond for their good behavior and maintenance, the legislature in 1845 passed another act permitting them to come forward within six months after the passage of the act for the purpose of executing the bond prescribed by the act of 1843. Free negroes between the ages of seven and twenty-one years were, under the act of December 28, 1840, required to be bound out as apprentices, in the same manner as any other case of bound apprentices, except that in lieu of education the hirer was required to give to any male free negro apprentice on his arrival at the age of twenty-one years the sum of one hundred and fifty dollars, and to a female apprentice certain enumerated articles of a value not less than fifty-two dollars.

To prevent the escape of slaves the legislatures of 1849 and 1851 enacted more stringent laws. Provisions were made for their apprehension and detention until they could either be returned to the master or disposed of. The sheriff was required to give a minute description of such runaway slave by publication for six months, and if the owner failed to appear and prove his property he was to be delivered to the keeper of the penitentiary, who was to keep him safely, work him in the same manner as convicts were worked, and again advertise for six months a description of the runaway. If no owner appeared and made proof of ownership he was to be sold and

the money paid into the state treasury. Every slave found more than twenty miles distant from the place of the owner, or where he was employed, was declared to be a runaway slave within the meaning of the law. For crimes committed by slaves against the person or property of individuals, less than a felony, they were not to be indicted or prosecuted until the master had an opportunity to compound with the injured party, and refused to pay the damages sustained.

The legislature, no doubt, realizing the evil effect of intoxicants on negroes, prohibited the sale or giving to any negro, whether slave or free, any ardent spirits; and no master, owner or overseer was permitted to hire or employ any slaves or free negroes in any place where intoxicating liquors were sold in quantities less than one quart. This act was construed by the supreme court to include any employment about a dramshop, even such as sweeping the house, rolling barrels, bringing water and the like.

To induce any slave to abscond from his master was made an offense punishable by confinement in the penitentiary for not less than two nor more than five years.

The movement for the abolition of slavery had evidently made some progress in 1850, and fears of insurrection must have been entertained, for in that year the legislature made it an offense for any person to maintain, by speaking or writing, that owners had no right of property in their slaves, and any person who would write, print or cause to be written or printed, any book or other writing, with intent to advise or incite slaves to rebel or make insurrection or inculcate resistance to the right of property of masters in their slaves, or should circulate such book or writing, was to be punished by confinement in the penitentiary.

Capital punishment was to be inflicted on negroes, whether slave or free, for the following offenses, which were not capital, when committed by a white man: Crimes against nature or assault to commit rape on a white woman.

A slave convicted of larceny for stealing a slave, a horse or mule was for the first offense to receive on his bare back not less than fifty lashes well laid on, and stand in the pillory not less than two hours; and for the second offense suffer death.

Ample provision was made to enable free negroes unlaw-

fully held in slavery to institute suits for the recovery of their freedom. But the writ of *habeas corpus* could not be invoked by a negro or mulatto held as a slave or a fugitive slave from another state; his only remedy was by an action for freedom under the statute. A slave wrongfully imprisoned or held as a runaway was permitted to apply for release by writ of *habeas corpus*.

Every negro, notwithstanding the admixture of Caucasian blood, and even if the admixture of African blood was but small, less than one-sixteenth, was presumptively considered a slave, and the burden of proof was upon him to prove that he was a free person. This was decided by the supreme court, although the statute defined a mulatto to be "a person who is not a full negro, but who is one-fourth or more negro."²

The rapid growth of the movement for the abolition of slavery throughout the northern part of the United States, and the successes achieved by the party favoring this movement in the congressional elections of 1858, evidently alarmed the people of the southern states where slavery existed, and we therefore find that in 1859 the legislature of the State enacted a very stringent law to remove all free negroes from the State. The act approved February 12, 1859, provided that no free negro shall be permitted to reside within the limits of this State after the first day of January, 1860. Any free negro found in the State after that date was to be arrested and hired out for twelve months, and upon the expiration of such period the money received for his services was to be used for the purpose of exiling him from the State. If the negro failed to leave within thirty days after the expiration of the period for which he was hired, he was to be tried by a jury, and, if found guilty, was to be sold into slavery. The money realized from such sales, after payment of the costs and expenses, was to be paid into the county treasury. All children between the ages of seven and twenty-one years who were free negroes were to be hired out until they arrived at the age of twenty-one years, and upon arriving at that age they were to forthwith leave the State, otherwise they were to be sold into slavery. A free negro desiring to remain in the State could do so only by choosing a master

²Daniel vs. Guy, 19 Ark., 121; Gary vs. Stevenson, 19 Ark., 580.

or mistress, and if they consented to accept him he should, upon payment of one-half of the value of the negro in the state treasury, be their slave in the same manner as if he had been purchased. By an amendment to this act approved January 3, 1861, the master thus chosen by the negro was relieved of paying anything for him.

By the act of February 2, 1859, the emancipation of slaves by deed or last will was prohibited. Captains and owners of steamboats navigating in waters of the State were prohibited by an act approved February 21, 1859, from employing free negroes on their boats.

Imprisonment of slaves for violating the criminal laws of the State, capital crimes excepted, was abolished, and in lieu thereof they were to be punished with stripes, according to the grade of the crime, provided that no convict was to receive more than one hundred lashes, well laid on the bare back, in any one day. By an act approved January 10, 1861, free negroes held in duress or by operation of law were permitted to remain in the State until January 1, 1863, free and exempt from the operation of the act of February 12, 1859.

By the act of January 19, 1861, the act of 1851 was amended to the effect that runaway slaves, after they had been delivered to the keeper of the penitentiary by the sheriff of the county where found, no claimant having appeared during the six months they were kept in the custody of the sheriff, were to be kept in the penitentiary for two years, and if then unclaimed were to be sold as slaves at public sale to the highest bidder, the purchase money to be paid into the state treasury.

The constitution of 1861 adopted by the state convention which passed the secession resolution prohibited the general assembly from enacting laws for the emancipation of slaves. Article VII, section 3, and section 24, article IV authorized the general assembly "to enact laws to oblige owners of slaves to treat them with humanity, and prescribe a code of laws defining their rights, regulating their intercourse with each other and their relations with the free white people of this State; defining crimes which may be committed by slaves, prescribing appropriate punishments for such crimes, and providing courts for the trial of slaves and the mode of procedure in such courts."

Article V of the constitution of 1864 abolished slavery in the State, but by a resolution of the constitutional convention "no negroes or mulattoes not living then in the State were permitted to be brought in or reside in the State, save by the authority of the government of the United States or under some proclamation of the president." This resolution seems to have been a dead letter, as no attempt was ever made to enforce it even before the adoption of the thirteenth amendment to the national constitution.

It seems strange that no statute was ever enacted for the protection of slaves against cruel treatment, although the constitution expressly provided for laws "to obligate owners of slaves to treat them with humanity."

Sources:

Constitutions of Arkansas, 1836, 1861, 1864.

Revised Statutes of Arkansas, 1838; English's Digest,
Gould's Digest.

Session Acts of Arkansas, 1836 to 1864.

HISTORY OF CANE HILL COLLEGE.

BY WILLIAM C. BRALY.¹

Cane Hill is one of the most beautiful and interesting sections of country to be found in the whole Ozark region of northwest Arkansas. It is located in townships 14 and 15 north, range 32 west, and is about seven miles in length from northeast to southwest and is from one to three miles in width.

The "Cane Hill soil" is a rich sandy loam. The early settlers found the hills as well as the valleys covered with a growth of timber and vegetation common to the alluvial bottom lands. Black walnut, wild cherry, pawpaw and immense grape vines abounded, and dense cane brakes were found not only in the valleys, but also on the hills. Hence the name "Cane Hill."

On almost every hand crystal springs of pure, cold water

¹William Carrick Braly was born in Franklin County, Missouri, November 15, 1841. His father was a pioneer Cumberland Presbyterian minister in south Missouri and north Arkansas. He moved with his family to Cane Hill in 1853, where he died in 1856. Young Braly was left the chief support of the family. He received his education in Cane Hill College. He entered in 1862 the Confederate service and served as a private in company B, thirty-fourth regiment of Arkansas infantry until the close of the war. He saw service at Prairie Grove, Helena and Jenkin's Ferry. After the war he engaged in farming for twenty years. In 1868 Mr. Braly married Miss Laura Hagood of Cane Hill.

Mr. Braly has been active in politics, being a Democrat. He has served seven times as a member of the Democratic state convention, and in 1892 as temporary chairman of the convention. He represented Washington County in the house of representatives in 1877, 1879 and 1883, being speaker the latter year. In President Cleveland's administration he was special agent of the United States land office. From 1893 to 1906 he was chief of the division of accounts in the United States land office at Washington. After 1889 he made Fayetteville his home. He served two terms as a member of the city council of Fayetteville. From 1907 to 1909 he was a member of the state board of charities. After 1873 he was a member of the board of trustees of Cane Hill College, and for a time secretary of the board.

Mr. Braly for many years has been an elder in the Cumberland Presbyterian Church, both before and after its union with the Presbyterian Church, U. S. A. He is state clerk of the Presbytery of Arkansas, U. S. A. Since 1909 he has resided in Lincoln.—EDITOR.

gushed from limestone bluffs and ledges, there being more than one hundred within the area of Cane Hill.

The beauty of the scenery, the richness of the soil and the abundance of good water appealed to the intelligent pioneer in search of a place where he might build a new and comfortable home, and attracted to this locality a citizenship unsurpassed in those qualities that stand for the moral growth and material prosperity of the community. This much is said of Cane Hill for the reason that the future college was the product of the place and the people.

The venerable Professor Andrew H. Buchanan of Cumberland University, Tennessee, who was reared at Cane Hill, leaving there in 1850 to attend Cumberland University, speaking of the earlier days of Cane Hill College in a letter to the writer, says:

"I know that the establishment of the college was due to the public spirit, high moral character and appreciation of higher education of the Cane Hill settlers. A more substantial community I have never seen elsewhere. The influence of that people will live and work when their names are forgotten as many of them are even now."

A few settlers came to Cane Hill in 1827 and there was quite an influx in 1828. The sentiment of the community was positively religious, and denominationally it was strongly Cumberland Presbyterian. With the people came also their preachers. The Rev. John Carnahan had immigrated to the district in 1812, seven years prior to the organization of Arkansas territory. He was then a licensed exhorter in the Cumberland Presbyterian Church, which had been organized but two years previous. He joined two sons and the families of James and Jacob Pyeatt, who had immigrated in 1811 and were settled at Crystal Hill, in what is now Pulaski County, fifteen miles above Little Rock, and in that settlement in 1812 is said to have preached the first Protestant sermon ever delivered on Arkansas soil.² His descendants are still found among the people of Cane Hill. The Rev. Andrew Buchanan, the Rev. William T. Larrimore and the Rev. Jesse M. Blair, young men just entered on the work of the ministry, also came to Cane Hill as early as 1828.

On the thirtieth day of August, 1828, the Rev. William T. Larrimore and the Rev. Jesse M. Blair organized the Cane Hill congregation of the Cumberland Presbyterian Church with

²McDonald's History of the Cumberland Presbyterian Church.

thirty-eight members. Among these were found the names of Buchanan, Carnahan, Pyeatt, Haggard and others whose names are identified with the history of Cane Hill College. This was doubtless the first church organized in northwest Arkansas. Following closely the organization of this church in October, 1828, a Sunday school was organized by Rev. John Carnahan at the residence of James Buchanan. This house was located some two miles northeast of the present village of Cane Hill, and in 1911 is still standing and occupied as a residence. This Sunday school was the first educational movement started in the Cane Hill community. It was followed by the old log schoolhouse and the day school.

The writer did not come to Cane Hill until 1853, but he distinctly remembers more than one of Cane Hill's primitive schoolhouses still standing at that date.

Those active in directing the affairs of the Cane Hill community from the beginning until 1850 have long since passed away and no record has been left of the schools that were taught, but from his own observation and from intercourse with the people of that day the writer is able to state that during the fourth and fifth decades of last century substantial schoolhouses were built, and teachers were employed, and longer terms of school were taught.

The first steps looking to the establishment of a permanent school appear to have been taken in 1834 at the "Cane Hill meeting house," two miles northeast of the village. B. W. McDonald, in his history of the Cumberland Presbyterian Church, page 304, refers to this movement as follows:

"The 28th day of October, 1834, a meeting of the Cumberland Presbyterians of Washington County, Arkansas, was held in the Cane Hill meeting house for the purpose of taking the necessary steps to establish a school. This was two years before Arkansas became a state of the Union, and six years before Cumberland University at Lebanon, Tennessee, was born. The Rev. Samuel King, then traveling as evangelist at large, was called to the chair and presided over the meeting. A board of trust was chosen, and the Rev. B. H. Pierson, D. D., was elected president and Ezra Wilson clerk. This school was opened April, 1835, and was probably kept up in some form until seventeen years afterward, when Cane Hill College was chartered. Cane Hill was only about ten miles from the Indian country. The tracks of the red man were scarcely gone from the spot. The three men who organized the first Presbytery of the Cumberland Presbyterian Church are all living, and one of them presided over this meeting. This school in the wilderness, some say, was the first institution of learning

ever established on Arkansas soil. Its prime object was to educate young men preparing for the work of the ministry."

This school was started in the vicinity of the "Cane Hill meeting house," commonly known as the "upper end of the hill." A substantial, two-room, hewed log house was built with capacious fireplace, which did service as a school building almost to the beginning of the Civil War. Some of the best educators in the west were employed from time to time in this school, among them Rev. Cephas Washburn, a Presbyterian minister and missionary widely known in the early history of Arkansas.

It must have been in the early forties, or before, that a good hewed log schoolhouse was built one and a half miles southwest of the future college site, in which the Rev. Samuel Newton taught for several years. This was termed the "Elm Grove school." Mr. Newton was succeeded in the school by Mr. Thomas G. McCollough, an educated and experienced teacher from Illinois. The "Elm Grove school" had not only a local patronage, but students from adjoining and even distant counties attended.

Gen. James F. Fagan of Confederate fame was for a time a pupil in this school.³ The locality was termed the "lower end of the hill." Thus, more than one effort was made to establish a permanent school in the Cane Hill community.

In 1850 a substantial brick house of two rooms was built and Thomas G. McCollough of the Elm Grove school and Samuel Doak Lawry of Indiana, both cultured and experienced teachers, were employed and school was started, nominally under the patronage of the Presbyteries of Arkansas and of Washington of the Cumberland Presbyterian Church and entitled "Cane Hill Collegiate Institute."

This school was located near the neighborhood village then called Boonsboro, but in later years changed to Cane Hill.

The collegiate institute was a school exclusively for boys, but the Cane Hill people had no thought of leaving their daughters uneducated. As already seen, there were two other educational centers on Cane Hill. At each of these a school for young

³This I had from General Fagan himself.

ladies, with a primary department for both sexes, was established.

In the neighborhood two miles northeast of the village already referred to as the "upper end of the hill," Miss Laura Graham, a cultured and accomplished teacher, graduated from Mount Holyoke Seminary in Massachusetts, was placed at the head of the school, and Miss Abby Coleman, another New England lady, was placed at the head of the school at the "lower end of the hill."

Here near the old Elm Grove school, a neat frame house of two rooms was built, almost entirely at the expense of Mr. James B. Russell, for the young ladies' school.

A history of Washington County published by "The Good-speed Publishing Company," Chicago, in 1889, refers to this school as follows:

Upon the establishment of Cane Hill College, Mr. Russell proposed to donate the property to the church provided \$500.00 was raised for the college in his name.

This was done and Cane Hill Seminary became as famous an institution for the education of young ladies as Cane Hill College was for the education of young men.

In 1851 or 1852 Miss Coleman was succeeded by Mr. Thomas G. McCollough of the collegiate institute. Professor McCollough retired from this school in June, 1854, and was succeeded by Miss Etta M. Lord of New York.

In 1856 a two-story building with belfry was added to the seminary and the Rev. Newton Givens, from Mississippi, a Cumberland Presbyterian minister, was placed at the head of the institution with a competent corps of assistants. A music department was also opened.

Cane Hill Female Seminary was in a flourishing condition when closed by the war in 1861.

In 1851 Rev. Robert M. King of Spring River Academy in Lawrence County, Missouri, was called to the principalship of the Cane Hill Collegiate Institute.

Mr. King was an experienced teacher, having taught for several years in the Spring River Academy, and previous to that in the State of Ohio. He was a nephew of Rev. Samuel King, one of the founders of the Cumberland Presbyterian Church. He was a graduate of old Cumberland College of Princeton,

Kentucky, afterward removed to Lebanon, Tennessee, and becoming Cumberland University.

So competent were Messrs. King and Lowry, and so successful was the school under their management, that the officers of the institution and its patrons began to plan for better and larger things, and a "college" in this then far western country was talked of.

In a memorandum found among the papers of the late Dr. F. R. Earle it is stated that the Rev. Andrew Buchanan first conceived the idea of starting a college.

Andrew Buchanan was the first settler where the town of Prairie Grove now stands. He lived for many years and died hard by the beautiful spring that waters that thriving town. He was a forceful man and was the recognized leader in the Cumberland Presbyterian Church in that country.

He was a leader not only in the church, but was a recognized leader among men. He presided over the "committee" that tried and executed the murderers of William Wright and family in 1839. He died in 1857, and by his will left his beautiful home to Cane Hill College.

The plan for the college was matured in 1852 and on the 15th day of December in that year the general assembly of the State passed an act incorporating the board of trustees and granting a charter to Cane Hill College—the first chartered college in the State of Arkansas.

The following extracts from that act show the organization of the college and the scope of its powers. The act provided—

"Section 1. That the name of the institution of learning at Boonsboro in Washington County, Arkansas, heretofore known as 'Cane Hill Institute,' be, and the same is, hereby changed and said institution shall hereafter be denominated 'Cane Hill College.'

"Sec. 2. That said institution shall be under the control and management of the Arkansas Synod of the Cumberland Presbyterian Church instead of the Arkansas and Washington Presbyteries of the said church.

"Sec. 3. That the following persons be, and they are, hereby appointed trustees of said college, viz.; Andrew Buchanan, James B. Russell, Lewis B. Hagood, Benjamin H. Pierson, Samuel Doak Lowry, Richard H. Bean, James A. Hagood, Samuel McColloch, George Morrow, Isaac W. Talkington and Anderson Cox, who are hereby constituted a body politic and corporate, in deed and in law, by the name of the 'Board of Trustees of Cane Hill College,' and by that name they and their successors in office shall have perpetual succession. * * * *Provided*, they shall always be under the

control of said Synod; and *provided*, they shall perform no act contrary to the laws of this State or of the United States.

* * * * *

"Sec. 11. That the faculty of said college shall have power to confer such degrees in the arts and sciences upon the students thereof, or upon such other persons, as in their judgment are worthy of them, as are usually conferred by colleges and universities in the United States; and to grant diplomas or certificates thereof, which shall be signed by the president and professors of said college and sealed with the common seal of the corporation, to authenticate and perpetuate such graduation."

There were sixteen sections in the act, the others mainly providing details of administration not important to this paper.

Rev. Robert M. King was chosen president of the college, and to him was assigned the departments of ancient languages and literature; Samuel Doak Lowry was chosen professor of mathematics and assigned kindred duties.

The records of the college and the proceedings of the board of trustees prior to the Civil War were all lost. By the terms of the charter, however, the board of trustees was required to hold their first regular meeting on the 4th day of February, 1853. It is now uncertain whether the first collegiate term began at that time or with the beginning of the next collegiate year, the following September.

The school year was divided into two terms of twenty weeks each, the first beginning on the third Monday in September of each year. This date was afterward changed to the first Monday in September.

The president spent the summer of 1853 traveling mostly in the southern part of the State in the interest of the college, and the opening of the school in September witnessed a number of students from distant counties.

In 1854 a second building was erected. It was a framed structure, two stories high. One of the upper rooms was fitted for a literary society hall and library. One of the lower rooms was fitted as a college library and laboratory. "Philosophical apparatus" had been purchased at the cost of some \$500.00 with which the ordinary principles of physics could be demonstrated. At least one other room in the building was used for school purposes.

The first alumnus of the college was Mr. J. Walker Drake, who graduated with the degree of bachelor of arts in 1856; the

second was Mr. James H. Crawford, who took the same degree in 1857. He was immediately elected to a position in the faculty and taught in the institution one or two years.

At the end of the first term of the school year 1856 Rev. R. M. King resigned the presidency of the college and returned to his former home in Missouri to engage in other pursuits.

For two years the college was without a president, Professor Lowry acting in that capacity. But during that time the friends of the school at Cane Hill and elsewhere were not inactive.

The school was maintained and preparations were made for larger things. Prof. Pleasant W. Buchanan, who had been educated at Cane Hill, except his senior year, which was taken at Cumberland University, Tennessee, was elected a member of the faculty. Rev. W. G. L. Quaite was appointed financial agent of the college. Something of an endowment was raised, or rather promised, notes being given, which were all lost in the Civil War. A third and more commodious brick building 43 by 75 feet, two stories high, was erected at a cost of some six thousand dollars.

At this time the loyalty of the people of Cane Hill to their college and their liberality toward the cause of higher education was put to a more severe test than at any former period, and they bravely met the demand. Almost every man in the community contributed generously, according to his means.

Mr. James A. Hagood, a member of the board of trustees, a blacksmith in the village, who hammered out almost every dollar of his money on his anvil, paid five hundred dollars to the new building, and several others, but more able, paid the same amount. The building was completed for the fall term of 1858.

Beginning with the spring term of 1859, Rev. Fountain R. Earle, a graduate of the literary and theological departments of Cumberland University, Tennessee, was called to the presidency of Cane Hill College, and with the enlargement of capacity and equipment the institution took on new life. Rev. William P. Gillespie, another alumnus of Cumberland University, was elected to a position on the faculty.

In 1859 two young men, Mr. J. Thomas Buchanan and Mr. Samuel H. Buchanan, having completed the prescribed course, received the degree of bachelor of arts.

In 1860 two other young men, Mr. Frank M. Latta and Mr. James Galitzon Hagood, received the same degree. All four of these young men entered the ministry of the Cumberland Presbyterian Church. The three first named made the ministry their life work, but Mr. Hagood did not survive the war.

Galitzon Hagood was a young man of unusual brilliancy and promise. After graduation he was ordained to the full work of the ministry and for something like a year preached to the congregation at Ozark; but when the war came he enlisted with "the boys" in the Confederate service. He was engaged with the state troops in the battle of Oak Hills, later enlisted as a private in company H, northwest fifteenth Arkansas regiment of Confederate infantry, and engaged in the battle of Pea Ridge; was promoted to the captaincy of his company, and died at Okalona, Mississippi, June 12, 1862, at the age of twenty-one years and three months.

The spring of 1861 found the college in the most flourishing condition it had yet attained. Then came "grim-visaged war." The hearts of men north and south were fired with passion and patriotism, and the young men of the country left all behind and rushed to the conflict.

In May, 1861, the doors of Cane Hill College were closed.

Prof. Pleasant W. Buchanan organized a company for the state service largely from the young men of the college, and the honored president marched away in the ranks with the boys.

The institution as they left it was never to be reopened, and many of these brave boys were never to return. The gallant captain himself perished in the conflict.

On the 12th and 13th days of November, 1864, the college building with the entire village were burned by United States soldiers connected with the command of General Blount.

The Confederate general, Sterling Price, returning south from his "Missouri raid," rested with his command a few days at Cane Hill, and left there, in private houses, a number of sick and wounded Confederate soldiers. General Blount's forces having followed him as far as the Arkansas River, returned by way of Cane Hill, and in passing destroyed, by burning, almost the entire Cane Hill country, including the village of Newton, which had grown up around the young ladies' semi-

nary at the "lower end of the hill," sparing only those houses above referred to in use as Confederate hospitals.

Thus was the work of a generation swept away and the Cane Hill community left homeless and in want.

At the close of the war one looking over the beautiful Cane Hill landscape saw little but ruins on every hand. Broken walls and crumbling foundations marked the places where the college buildings had stood. Splendid business houses in the village were in ruins and all around lone chimneys stood, silent sentinels over the desolation.

The friends and supporters of the college were depleted in numbers and broken in fortune. The reconstruction of the college seemed impossible.

But as soon as the people of Cane Hill were re-established in their own homes they again turned to the college. In the early part of 1868 the main college building erected ten years before was rebuilt, this time of wood instead of brick, and in September, 1868, the college was again opened with the president, Rev. F. R. Earle, still at the head of the institution and Prof. James Mitchell, A. B., also of the faculty. With the beginning of the school year 1869 Prof. Jacob P. Carnahan, A. B., was associated with President Earle and Professor Mitchell.

After the Civil War the Synod of Arkansas, under whose control and management the college was placed by the terms of its charter, practically withdrew its support from the institution—that is, the Synod never assumed to direct the affairs of the college and gave it no official support, although some individual members of the Synod did aid the institution with their sympathy, influence and patronage. It was, however, the generosity and self-sacrifice of the people of Cane Hill that made the re-establishment of the college a possibility, and it was only by the hard labor and personal sacrifice of the faculty, Dr. F. R. Earle and Professors Mitchell and Carnahan, that the school was maintained.

Professor Mitchell withdrew from Cane Hill College in 1874 to accept a position in the faculty of the State University, which had been opened at Fayetteville in the same county in 1872.

Professor Mitchell retired from the State University about the beginning of 1877 to become editor of the *Arkansas Gazette* at Little Rock. A little later he became one of the proprietors of the *Arkansas Democrat*, also at Little Rock. In that capacity he became widely known and his paper became a potent factor in the politics of the State.

Professor Mitchell was born at Cane Hill in 1832 and grew up in that community. He was educated in the earlier schools of Cane Hill and at Cane Hill College before the Civil War. He was a splendid type of the manhood developed in that institution.

Upon the retirement of Professor Mitchell, Prof. H. Bourland, a son of the late United States Senator Solon Bourland, was elected to fill the vacancy. Professor Bourland remained with the college only one or two sessions.

In 1875 a female department was opened in the college and Rev. Dr. H. M. Welch, who had been principal of a young ladies' seminary at Boonsboro, was elected principal of the new department in the college. A music department was also established.

In 1882 Professor Welch retired from Cane Hill College to accept the position of principal of the preparatory department in the State University at Fayetteville.

President Earle and Professor Carnahan, with assistants in the preparatory department, continued with the college until Professor Carnahan retired in 1883 to engage in other pursuits.

Prof. Jacob Preston Carnahan was born at Cane Hill September 2, 1832. He was a grandson of Rev. John Carnahan and a son of Samuel Carnahan, who came to Arkansas in 1811. His maternal grandfather, Jacob Pyeatt, also came to Arkansas in 1811, and the families settled at Crystal Hill, Pulaski County, in 1812, from whence they removed to Cane Hill in 1827 and 1828. He received his early education at the Cane Hill schools, attending the schools at both the upper and lower end of the hill.

His education was completed at Cane Hill College, except the last year, which was spent at Cumberland University, Tennessee.

He engaged in civil engineering for a time, but returned to Cane Hill, and in 1858 was married to Miss Sue Crawford,

a daughter of Col. Hay Crawford, one of the early settlers of Cane Hill. When the Civil War came up he was engaged in farming, but in 1861 left his plow and raised a company for the Confederate service, which in the regimental organization became company G of the sixteenth Arkansas Confederate infantry.

Captain Carnahan was engaged at Pea Ridge, Corinth, and in the siege of Port Hudson, where he was surrendered and imprisoned at Johnson's Island and other points. He was severely wounded in the battle of Corinth and ever since has carried a Minie ball in his knee, which has often given him much pain. The effects of this wound doubtless had much to do with placing him in the school room for so many years, as he was in a measure disqualified for more active duties; but, on the other hand, it gave his valuable services to the cause of education and to the rebuilding of Cane Hill College.

For sterling worth, unflinching courage and manly devotion to the moral and material prosperity of the community and the commonwealth, Captain Carnahan stands among the first of the old students of Cane Hill College.

At the end of the spring term of 1885 Dr. Earle resigned the presidency of the college and retired from the school with which he had been connected for so many years. Rev. J. P. Russell, also a graduate of Cumberland University, was elected president of Cane Hill College, and entered upon the duties beginning with the school year in September, 1885. Miss Minnie A. Goodman, a graduate of Michigan State Normal School, entered upon duty as a teacher in the institution at the same time.

But other misfortunes were awaiting Cane Hill College. The constancy of the people of Cane Hill to this school was to be again tried. On the 10th of October, 1885, the college building was a second time destroyed by fire, evidently the work of an incendiary. Meetings of the board of trustees were held October 20 and 21 and arrangements were perfected to continue the school in other buildings through the school year.

The school being temporarily provided for, the board met again on October 22 to consider the future of the college. There were present at that meeting J. P. Russell, president; W. C. Braly, secretary; Z. B. Edmiston, Samuel T. Cole, H. L. Routh, H. C. Pyeatt, H. M. Welch, G. W. Morrow and S. G. McClellan.

After considering the situation the board resolved to take immediate steps to rebuild the college. A committee was appointed to solicit subscriptions for the purpose and Dr. F. R. Earle was appointed financial agent of the board. At subsequent meetings plans and specifications were approved, the college site was changed to a point nearer the village and more accessible to the public roads, and a contract for a new building was awarded to Prof. J. P. Carnahan for the sum of \$5,750.00.

The new building was of brick, two stories high, four school rooms on the first floor and the second story, arranged for an auditorium, was used by the local congregation for church purposes.

The new building was not completed until December, 1886, and the fall term of the school was omitted. On the 27th of December the board made final settlement with the contractor and paid the balance due on the contract price.

Dr. F. R. Earle was again elected president of the college and the school was reopened January, 1887, F. R. Earle being president, Prof. A. R. Carroll, principal of the preparatory department, and Miss Minnie A. Goodman, principal of the primary department.

After rebuilding in 1886 and the reopening in 1887 the school did fairly well for three or four years, when its doors as a college were finally closed.

It had lacked the support of the Synod of Arkansas as contemplated in its organization, and it was overshadowed by the State University less than twenty miles distant. The people of Cane Hill and the sacrificing faculty of the institution were unable longer to maintain a college standard.

The influence of Cane Hill College for good in Washington County and the State at large can never be estimated. This influence was manifest in one thing, perhaps, more than directing public attention to the possibility of educating our own young people within the borders of the State, and implanting and fostering in the public mind a sentiment in favor of higher education. This sentiment was forcefully manifest in the vote of Washington County that resulted in locating the State University at Fayetteville.

But the influence, reputation and patronage of the college

were not local, they extended to all parts of the State and brought students to the school from many distant counties.

The writer has personal recollection of students who from time to time attended Cane Hill College from the counties of Benton, Madison, Carroll, Marion, Izard, White, Jefferson, Drew, Union, Ouachita, Hempstead, Little River, Sevier, Howard, Polk, Scott, Logan, Yell, Pulaski, Conway, Pope, Johnson, Franklin, Sebastian and Crawford. Many students also attended the school from the Choctaw, Chickasaw, Creek and Cherokee tribes in the Indian territory and a number from the States of Missouri and Texas.

The first class graduated after the Civil War was in 1873. Two young men were in that class—James A. Rice, for many years a prominent attorney at Bentonville, Arkansas, and Eli B. Perkins, who also became a prominent attorney in the State of Texas.

In 1874 there was but one member of the senior class, Mr. William N. Yates, who has for many years been a practicing physician in the city of Fayetteville. He has also been a member of the board of trustees of the State University and president of the school board of the city of Fayetteville.

There were no graduates in the year 1875, but the senior class of 1876 was composed of two young men and two young ladies—Mr. John S. Edmiston, who engaged in the mercantile business at Cane Hill; Mr. Ed W. Yates, a merchant for a number of years at Booneville, Arkansas, now deceased; Miss Lizzie Blackburn, deceased, and Miss Lou P. McClellan, who became the wife of Rev. I. A. Gaither.

The senior class of 1877 was the largest in the history of the college, and consisted of one young man and five young ladies—Mr. Walter T. McClure, who became a prominent minister in the Methodist Church, South, in the State of Missouri; Miss Mary Mock, Miss Callie Mock, Miss Ella B. Tydings, Miss Amanda Smith and Miss Etta Mann.

There was only one member of the class of 1878—Miss Lizzie White.

In 1879 there were two young men in the senior class—Mr. James C. White, a business man of Fayetteville, and Mr. John Shipley. The latter entered on the profession of medicine, but death cut short his useful life. A son of his, Mr. John

Shipley, Jr., in 1910 won the Rhodes scholarship from this State to the Oxford University, England.

There were no graduates from the school in 1880, but the senior class of 1881 consisted of three young men and two young ladies—Miss Nettie Cole and Miss Eva Carnahan, Mr. Alfred E. Carnahan, now a minister in the Presbyterian Church and pastor of the Cane Hill congregation; Mr. William H. Moore, a physician, deceased, and Mr. Sam H. Wheat, an attorney of St. Louis and for a number of years connected with the legal department of the St. Louis and San Francisco Railroad.

In 1882 the only graduate of the college was Mr. William B. Rutherford, who took the degree in civil engineering.

The senior class of 1883 was composed of two young ladies—Miss Stella Carnahan of Bentonville and Miss Mary Clem Carnahan of Cane Hill.

The class graduated in 1884 consisted of three young men and one young lady—Mr. George Albert McBride, a practicing physician at Fort Gibson, Oklahoma; Rev. Robert F. Adair, a Presbyterian minister now of Providence, Kentucky; Rev. John W. Sullivan, deceased, and Miss Clara Earle, teacher in Cumberland University, Tennessee.

There were no graduates from the college in 1885 or 1886.

The last class of graduates came from the college in 1887—two young men and one young lady—Mr. Charlie Moore of Cane Hill and Rev. J. T. Maloy, now laboring as a missionary under the Presbyterian board of foreign missions in Mexico, and Miss Anna Morrow of Morrow, Arkansas.

All of these except Mr. William B. Rutherford took the degree of bachelor of arts.

The writer has before him a printed announcement of the college for the year 1879-80, from which it appears that tuition in the primary department was \$8.00 per session, from \$13.00 to \$18.00 in the preparatory department, and \$25.00 in all college classes.

It is also stated that music, drawing and painting are taught in connection with the school. Good boarding is announced at two dollars per week.

A catalog of the college for the scholastic year ending June 6, 1884, shows the total enrollment for that year to have been 120. Rev. F. R. Earle, A. M., D. D., president; Mrs. A. B.

Earle, principal of the female department, and assistants in all departments employed as needed. Miss Kittie Earle of Madisonville, Kentucky, was teacher of music, with fifteen pupils in the department.

The board of trustees at that time consisted of Rev. F. R. Earle, D. D., president; Z. B. Edmiston, secretary and treasurer; E. W. McClellan, W. C. Braly, Rev. H. M. Welch, Henry C. Pyeatt, Prof. J. P. Carnahan, Rufus Seay, S. G. McClellan and George M. Hagood.

In addition to the persons already named in this paper as members of the board of trustees of Cane Hill College, the following named persons from time to time served as members of said board: J. A. L. McColloch, Lewis W. Yates, Judge J. L. Henry, Rev. B. M. Routh, James Stevenson, John Spencer, E. W. M. McClellan, Dr. W. B. Welch, L. P. Ayres, W. S. Moore, Dr. J. L. Bean, W. P. Patterson, John S. Edmiston, Clem McColloch and W. H. Buchanan.

In conclusion, there is here appended a fragment from the pen of Dr. F. R. Earle, found among his papers. The date and occasion of the writing are unknown, but it is valuable as a tribute to the results accomplished by Cane Hill College. Unfortunately, part of the paper is lost.

It is entitled, or headed, "Other Students of Cane Hill College." Dr. Earle says:

"Before speaking of the others, I wish to say this concerning the list of graduates: Not one whose name appears on that list has become a drunkard, a gambler or otherwise a vicious person. All who yet live are worthy members of society and are doing something to make the world wiser and better.

"A great many have attended the school for one, two or more sessions who have gone forth and in life's various walks have made their marks in the world. In the earlier days of the college, when the neighborhood was young and strong, the school had the support of the Buehanans, Mitchells, Carnahans, Crawfords, Beans, Spencers, Pyeatts, McCollochs, Hagoods and a number of others. Besides these of the community the boarding patronage was extensive.

"Among the students here before the war may be mentioned Prof. James Mitchell, who is too well known in the State to need anything like a biographical sketch in this paper; Rev. Peter Carnahan of Bentonville, Capt. J. P. Carnahan, William Mitchell, W. C. Braly and others who have been known more or less in public life received a great part of their education at this place. Quite a number of the solid, good farmers also of this and adjacent communities were educated in this school.

"From other counties some came who have gained success and dis-

tinction. Among these I might mention Robert J. Wilson, a prominent merchant of Russellville, Arkansas, and the Hon. B. J. Brown of Van Buren. Hempstead County gave good patronage from the families of the Stewarts, Burts and others.

"After the war we had from the Indian Territory some of the Vanns, Graysons, Porters, Brewers, Foremans, Standwaitie and others who have been men of mark."

The memory of this school will be cherished as long as one of its sons or daughters shall survive.

Long may Cane Hill College live in the educational annals of the State.

NOTE.—The writer desires to express his obligation to Capt. J. P. Carnahan for valuable assistance in the preparation of this paper, particularly in the pages relating to early educational affairs of Cane Hill.

From 1853 the college affairs were constantly under his own observation, first as a student and later as a member of the board of trustees, and for that period he has relied largely on his personal recollection of men and things.

HISTORY OF IMMIGRATION TO ARKANSAS.

BY J. M. LUCEY.¹

The subject of immigration to Arkansas may be extended so as to include the large period of years from the earliest times when white settlers could possibly have entered the present boundaries of the State to the present, or its treatment might be limited to the period of time between 1870, when foreign and other immigration became a noticeable factor in the population, and 1910. The historical importance of the events of our earliest times will justify some allusion to them in order to secure a general viewpoint that is complete and satisfactory. The pioneers of Arkansas were comparatively few in number, but their character was sterling, and their strong manhood left a deep impress upon the social, political and commercial life of our people.

FIRST PERIOD OF IMMIGRATION.

For the convenience of the reader, the first great period of immigration from the earliest times to 1870 will be divided into two parts, the first being made to extend down to 1803, when Arkansas as a section of the Louisiana Purchase was ceded by France to the United States, and the second part from 1803 to 1870. It is well to note here that the white population of the whole Louisiana territory, stretching from Fort Toulouse at the confluence of the Coosa and Talapoosa rivers in Alabama, westward and northwestward indefinitely, was in 1712 by enumeration only twenty-eight families. The white population of Arkansas, 1785, according to a census, was 196; 1799, 368; 1810, 1,062; 1820, 14,273, as follows: White, 12,570; colored slaves, 1,617; colored free, 59. In 1850 there were: White, 162,189; colored slaves, 47,100; colored free, 608. In 1880 there were: White, 591,531; colored, 210,994; Indians and Mongolians, 328.

¹For a sketch of J. M. Lucey, see page 324 of volume II of Publications of the Arkansas Historical Association.—EDITOR.

In 1900 there were: White, 944,580; colored, 366,984; Indians and Mongolians, 128, a total of 1,311,692. In 1910 there were 1,574,449. All census figures given in this paper have been furnished by the United States bureau of the census, and are official, excepting the figures for the periods previous to 1810.

Previous to 1790 there was no simultaneous enumeration throughout the United States, estimates being made by states or parts of them, or by historical writers like Bancroft and Parkman.

In 1850, out of a total foreign element in the United States of approximately 1,500,000, only 133,961 were found in the southern states. Down to 1900, persons of foreign birth continued to be practically a negligible element in the southern states. The per cent. distribution of foreign born by country of birth in the area added after 1790 to the United States was: Ireland, 23.4 in 1850, and in 1900, 8.5; England and Wales, 14.4 in 1850, and in 1900, 8; Germany in 1850, 40.3, and in 1900, 31.6. The native and foreign born population of Arkansas classified as to parentage in 1900 was as follows: Native white parents, males, 463,334; females, 434,334; native white foreign parents, males, 17,825; females, 15,101; foreign white males, 8,911; females, 5,275.

AMERICAN IMMIGRANTS.

The very small number of white people who entered the present confines of Arkansas before the beginning of the eighteenth century may be accounted for by the fact that the whole territory of the United States east of the Mississippi River was still a wilderness, the abode of the buffalo and Indian. "The Winning of the West," by Theodore Roosevelt, and similar works describe Kentucky in those times as a dark and bloody ground, from the uncertainty of human life on account of continuous Indian warfare. To the 400 white people estimated to have been in Arkansas in 1803 we may add a few who, as outlaws and marauders, came to hide and plunder. General Wilkinson's abortive and treacherous effort in 1787 to establish in collusion with the Spanish government a buffer nation west of the Mississippi River between the Spanish possessions and those of the United States contributed naturally a contingent to our early population.

THE EARLY FRENCH IMMIGRANTS.

It must be supposed that the French, who first landed at the Quapaw village just above the mouth of the Arkansas River, July, 1673, and who built a fort at Arkansas Post, 1686, dropped some of their number along the Mississippi and lower Arkansas rivers. Soon after the establishment of Biloxi, the first white settlement in Mississippi, May, 1690, communication with Quebec was opened, and during the entire eighteenth century there was much passenger and trade traffic along the entire line. Until sixty years ago the influence of French immigration was very strong in Arkansas. The name of the State is taken from an appellation which the earliest French explorers gave to a local Indian tribe. French voyagers from Canada and French exiles from France before and after the fall of Bonaparte came in considerable numbers. Many of our mountains and streams and some of our cities and their streets bear French names, or Frenchified Indian names. Fourche Le Fave, Petit Jean and Vache Graese are noted streams, the first near Little Rock and the latter two near Fort Smith. Fourche and Maumelle mountains lie north of Little Rock. Barraque, a colonel in the army of Bonaparte at Marengo and Austerlitz, is commemorated by a street in Pine Bluff. Lewis Bogy, from Canada, Francis Vaugine, Francis Notrebe, and many other distinguished Frenchmen from France are even at this distant date represented by worthy descendants.

THE SPANISH IMMIGRATION.

Spain was in possession of the Louisiana territory from 1762 to 1803, a period of forty-one years. No considerable number of Spaniards appear to have become actual settlers in Arkansas in this period. In 1763 France withdrew all but four companies of soldiers from the Louisiana territory, but after Spain had formally taken possession, French officers were continued in command of the various posts as long as Spain remained in control, the French "Sieur" being replaced as a title by the Spanish "Don." Don Joseph Bernard Vallière, who was commandant at Arkansas Post, with the rank of colonel, 1787-1790, and had seen service in the French army, 1761-1763, was

born in Languedoc, France, and his wife, Marie Felicité Moran, was a native of New Orleans.

Francis Nuisment Vaugine went with Don Vallière to Arkansas Post, 1787, with the rank of major, being, in the military parlance of those times, an adjutant major. He was the son of the Marquis de Vaugine, one of the captains of the four companies left in 1763 in the Louisiana territory by the king of France. The marquis was lieutenant colonel of the Royal and Military Order of St. Louis, a matter of some distinction, and his wife was Antoinette Pelagie D'Eliverliers.

The governor general of the Louisiana territory, Baron de Carondelet, 1793, made a grant of 7,276,000 acres of land to Don Joseph Vallière. The land stretched along White River in Arkansas through a large section of Missouri, and included 7,000 acres in Indian territory. Captain Vallière died intestate in New Orleans, 1799, and there was no administrator appointed on his effects. Captain Vallière married Marie Felicité Moran, by whom he had four children. The second child, Marie Felicité, was married to Major Don Francis Nuisment Vaugine, her father's adjutant major. Their daughter, Marie Felicité, married James Scull. The youngest daughter of Captain Vaugine, Eulalie, married Creed Taylor, October 21, 1821, and died August 1, 1827. In 1828 Creed Taylor married Mary Ann Valliere, a daughter of Francis Bernard Valliere (son of Don Joseph Valliere) and Mary Ann de Torres, a native of Sante Fe. She died in 1837. Only one child, Mrs. E. V. Walker, remains of the first marriage, and only grandchildren of the second marriage are living. From Arkansas Post as a center Spaniards and Spanish descendants migrated in small numbers to adjacent places.

SPECIAL SPANISH SETTLEMENTS.

Under the Spanish regime a second center of settlement was made at Camp Esperance, near the present location of Hopefield, and in this neighborhood, especially at Marion, were found the earliest Spaniards of the middle classes who made homes in Arkansas. Many of these proved their "settlements" under the various commissions of the United States sent out to ascertain the settlers entitled to land under the treaty provision of 1803.

LAW'S GERMAN COLONY.

John Law brought a colony of Germans to Arkansas Post in the early part of the eighteenth century, but when his bubble burst they went back to New Orleans and formed a permanent colony.

The varying fortunes of German and Polish principalities sent a few emigrants of noble blood to the wilds of Arkansas between 1825 and 1840. The traveler, Gerstaecker, has left interesting accounts of several of these. Little Rock attracted many German families in 1830, whose descendants are among the elite of the capital.

FROM 1803 TO 1870—AMERICAN IMMIGRATION.

A few of the old soldiers who had served under Washington during the revolutionary war came to Arkansas previous to 1803, but the great majority came after the passage of the land act by Congress in 1818. Each bore a certificate which entitled him to a homestead.

French immigration practically ceased with the transfer of the Louisiana territory by France to the United States in 1803. The population of Arkansas in 1810 was only 1,062. In 1870 there were 484,471; native born being 479,445, and the foreign born 5,626. It is clear that the steady and satisfactory growth of the population of Arkansas in this period, 1803 to 1870, was from accessions from other American states, chiefly the southern states to the eastward. The Scull family came, 1824, from New Jersey, and others later on from New York, Pennsylvania and Ohio, as well as from New England. But the great increase came from Virginia and her daughters, Kentucky and Tennessee. Those who are interested in this feature of immigration will find in "Pioneers and Makers of Arkansas History," by Josiah H. Shinn, a very complete account.

SOME NOTABLE ARKANSAS FAMILIES.

A few specimen characters will be given to enable the reader to form a general idea of the mode of immigration in those times. Frederick Rector, ancestry from Germany, lived in Fauquier County, Virginia, 1792. He had nine sons and four daughters. The sons went west to Illinois, Missouri and Ar-

kansas. William, Elias, Wharton, Stephen and Thomas came to Missouri territory, 1816, as United States surveyors, with a number of nephews and other relatives, and surveyed a large part of what is now Arkansas. The Newtons came from Virginia, 1820, Binks and Henderson Lafferty came, 1810, from North Carolina to Independence County, Arkansas. Binks married Sallie, daughter of James Miller, August 17, 1821, and on the same day Henderson Lafferty married Nancy Craig. Ambrose Hundley Sevier (formerly spelled Xavier) came, 1820, from east Tennessee to Little Rock. Terrence Farrelly came to Arkansas Post, 1820, from Meadville, Pennsylvania. Chester Ashley came to Arkansas Post, 1820, through Illinois from Massachusetts. In this way and about this decade came the Duvals, Hornors, Roanes and innumerable others who became founders of Arkansas families.

SECOND PERIOD, 1870 TO 1910—RECONSTRUCTION.

The Civil War between the northern and southern states closed April, 1865, and it would seem to those not familiar with the political conditions of the south that 1865 is a more natural date to mark the beginning of a new era of immigration than 1870. The year 1870 is really too early a time from which to date the period when a notable immigration began to enter Arkansas. From 1865 to 1875 were the disastrous years of federal reconstruction, the Brooks and Baxter War occurring in April, 1874, and Grant's recognition of Baxter. A new constitution was adopted October 30, 1874, under which a favorite son of Arkansas, Augustus H. Garland, became governor.

NO FOREIGN IMMIGRATION.

There was no foreign immigration into the State at this time on account of the presence of a large number of negroes, the reported unhealthfulness from malaria, but especially on account of false statements being spread abroad of lawlessness and disloyalty to the federal government. A large number of the officers and soldiers of the northern army who had served in Arkansas and had been discharged here settled in the State. Northern speculators in considerable numbers also entered the State and bought up cotton plantations and other ante-bellum sources of wealth. But, not understanding the commercial and

industrial conditions of the south, and especially the negro as a laborer, they generally lost their investments and then added their voice to the arraignment and condemnation of southern people and southern ways.

About the year 1875 the evil powers of federal reconstruction had expended their force and people of southern sentiments began to assume control of affairs. Everything had to be started anew under many adverse circumstances of debt and forfeited credit. At this time there was no railroad in Arkansas, except a short line of forty miles from Little Rock to DeVall's Bluff on White River, where a connection with Memphis by boat was made.

IMMIGRATION IN EARNEST—AMERICAN SETTLERS.

In 1860 the native born population of Arkansas was 431,850, and the foreign born 3,600. In 1870 the native born were 479,445, and the foreign born 5,626. In 1880 the native born were 792,175, and the foreign born 10,350. In 1890 the native born were 1,113,974, and the foreign born 14,264. In 1900 the native born were 1,297,275, and the foreign born 14,289. The total population of foreign parentage in 1900 was 47,467.

IMMIGRATION AIDED BY THE STATE.

The State of Arkansas, through state conventions and the efforts of many enterprising citizens began, immediately after coming into the control of her own affairs when the nightmare of federal reconstruction had disappeared, to give attention to the matter of immigration.

An interesting and complete pamphlet descriptive of the resources of the State was published, 1873, by James P. Henry—and more than 4,500 distributed at his own expense.

The following is the act of the state legislature:

“Be It Enacted by the General Assembly of the State of Arkansas:

“Section 1. That the sum of fifteen thousand (\$15,000.00) dollars is hereby appropriated out of any money in the treasury of the State not otherwise appropriated, for the purpose of paying James P. Henry for a further edition of his pamphlet entitled, ‘Resources of the State of Arkansas,’ etc.

"Sec. 2. Be it further enacted, That whenever the said James P. Henry shall deliver to the commissioner of immigration and state lands, or to the board of immigration, twenty-five thousand copies of his pamphlet entitled, 'Resources of the State of Arkansas,' etc., twenty thousand copies of which shall be published in the English language and five thousand copies in the German language, he shall present his account to the auditor of the State of Arkansas, and said auditor of the State of Arkansas shall draw his warrant on the treasurer of the State for the sum of fifteen thousand (\$15,000.00) dollars, as provided in the preceding section.

"Sec. 3. Be it further enacted, That it shall be the duty of the commissioner of immigration and state lands, or the secretary of the board of immigration, to distribute said pamphlets purchased of James P. Henry, wherever, in his opinion, they will be productive in promoting immigration to this State.

"CHAS. W. TANKERSLEY,

"*Speaker of the House of Representatives.*

"V. V. SMITH,

"*President of the Senate.*

"Approved April 28, 1873.

"ELISHA BAXTER,

"*Governor of the State of Arkansas.*"

The biennial report to Governor Garland of the commissioner of state lands, J. N. Smithee, October 1, 1874, to September 30, 1876, gives the following information:

IMMIGRATION DEPARTMENT.

"Notwithstanding your excellency, during the first session of the last general assembly, urged, as the commissioner of state lands did also, the passage of a bill creating a bureau of immigration, mining and agriculture, that body failed to pass any measure looking to the accomplishment of this object. The constitutional convention of 1874 refused also to continue the immigration department of this office.

"The necessity of some head—nominal though it may be—from which information could be disseminated in reference to the resources and advantages Arkansas offers to the immigrant and the capitalist, was so keenly felt that the land commissioner

established a department in his office for that purpose. Under the direction of the commissioner one of the clerks performs all duties of this kind—such as answering inquiries and sending off documents containing information in regard to the State.

"Early in 1875 the commissioner issued a circular letter to the people of the different counties recommending the organization of immigration societies, with a view to the collection and publication of information in regard to the resources of the same. The counties of White, Sebastian, Johnson, Lonoke, Pope, Dallas, Benton, St. Francis, Drew and Jefferson organized societies, but no report was ever received from any of them.

"The commissioner then undertook to obtain from the clerk of each county, by forwarding to them printed blanks, a report of the progress made in agriculture, manufacturing and mining during the year 1875. Notwithstanding all of the clerks were written and appealed to, many of them half a dozen times, only about half of them reported. The result of that effort was embodied in a little pamphlet issued by this office in May last, entitled 'Arkansas in 1875; How She Advanced During the Year,' etc. Two thousand copies of this pamphlet were printed. By estimates received from the different counties the number of immigrants arriving in the State during 1875 was placed at 50,000.

"The last legislature appropriated the sum of \$2,500.00 to pay for the distribution of documents, etc., in reference to the resources of the State. Of that appropriation the sum of \$912.70 has been expended for the printing of the pamphlet referred to, for advertising in northern papers, for printing blanks, for postage, expressage, etc. There has been distributed by this office since the date of last report about 15,000 copies in English and 3,000 in German, of 'Henry's Resources of the State,' 1,700 copies of 'Arkansas in 1875,' besides numerous other documents relating to Arkansas and her resources. I forwarded to the Arkansas building at the Centennial, Philadelphia, all the valuable specimens of ores of different kinds turned over to this office, with the geological department, at the time it was abolished, and everything else relating to the resources of the State that I could obtain.

"There being no law pointing out any duties of an immigration commissioner—and, indeed, there being no such commis-

sioner in fact—I have had to depend on my own judgment as to the manner in which the appropriation of the legislature should be expended. I would again urge your excellency to call the attention of the legislature to this matter—and if the land commissioner is to continue to act as immigration commissioner, let his duties be defined. I find it next to impossible to obtain reliable information from any county in the State as to its progress and resources. This is due to the fact that no one is charged with such duty, and no compensation is provided.

“During the first part of the present year I wrote and published in the ‘Spirit of Arkansas’ weekly articles on the resources of the State—but my experience so far teaches me that the only practical method to obtain a healthy immigration is through a regularly organized bureau, established according to law, and an appropriation of sufficient money to carry out the object of its creation.

NORTHWESTERN EDITORS SEE STATE.

“In the fall of 1875, the late Senator Loughborough and Messrs. T. B. Mills & Co. organized an excursion of about 150 editors from the northwest, who visited a large portion of the State. The expense of this excursion was borne entirely by the St. Louis, Iron Mountain and Southern Railway and Messrs. T. B. Mills & Co. Each editor on his return home had something good to say of Arkansas. All this was collected by Colonel Mills and republished in pamphlet form at his own expense. I purchased for the State 500 copies of this work and forwarded them to the Centennial for distribution at the Arkansas building. I also obtained from the secretary of state about twenty-five copies of Owens’ Geological Survey, which I forwarded to the same destination.

“Everything that could be done has been accomplished by this department. I have distributed every document relating to the resources of the State which was in this office at the date of last report. Provision should be made for a new work on the resources of the State, as there are constant demands for information of this character. There have been written by this department about 4,000 letters in answer to inquiries about the State.

"It is important to Arkansas that the general assembly take some decided step in regard to this matter. A good start has been made. All that is necessary now is for the organization of a bureau, specially charged with this whole subject."

EXCURSION OF NORTHWESTERN EDITORS IN ARKANSAS.

In 1875 T. B. Mills & Co., real estate agents at Little Rock, undertook the publication of a monthly newspaper, "Spirit of Arkansas," of which 20,000 copies were distributed in the northwestern states.

The question then arose as to the best means of giving circulation to the information which was now being gathered. Upon consultation with Col. James M. Loughborough, land commissioner of the St. Louis, Iron Mountain and Southern Railway Company, T. B. Mills & Co. determined, the coöperation of railroad lines being first secured, to invite the editors of a large number of newspapers in the northern and northwestern states to visit Arkansas in a body and make to their readers such report as they saw fit. The St. Louis, Iron Mountain and Southern Railway Company at once cordially endorsed the proposition, and lent its hearty coöperation, both in the proffer of free transportation from St. Louis and back, and in sharing with Messrs. T. B. Mills & Co. the other expenses of the trip. The other railroads leading to Little Rock, the Memphis and Little Rock and the Little Rock and Fort Smith, also offered trains and every reasonable facility.

The arrangements having been completed, Colonel Loughborough, acting for his railroad, and T. B. Mills & Co. issued invitations to 400 newspapers to send their representatives to St. Louis September 28, 1875, thence to be conveyed by a special train of Pullman cars through Arkansas, where they would be the guests of the various towns visited.

One hundred representatives of papers were received by Messrs. Loughborough and Mills at 9 p. m., September 25, at St. Louis. They came from California, Kansas, Iowa, Michigan, Indiana, Missouri, Illinois, Ohio, Pennsylvania and other states. The train consisted of four Pullman palace cars, one passenger and one baggage car. Thomas Essex, assistant land commissioner of the Iron Mountain Railway, W. S. Hered, Logan H. Roots and E. N. Hill assisted the reception committee.

For five days the party speeded over Arkansas, visiting Little Rock, Fort Smith, Hot Springs, Texarkana, Forrest City and intervening points. There were speeches galore—addresses of welcome at Little Rock were delivered by Gen. R. C. Newton and Judge U. M. Rose.

On the return home of the editors, accounts of the trip were published in their home papers. The most important of those reports were collected by T. B. Mills & Co., and put in a publication entitled "The New Arkansas Travelers," which makes interesting reading at the present time.

The Southern and Western Immigration Convention held its first session March 1, 1876, at New Orleans, La. Fourteen states were represented and the attendance was large. Governor Garland sent as representatives of Arkansas Gen. J. M. Pomeroy, Rev. A. R. Winfield and Col. Jordan E. Cravens.

An organization was effected and an adjournment made to meet in Little Rock March 1, 1877. The convention agreed that a committee of five should be appointed for each state, whose duties would be to organize county committees and a state immigration association, all to come under the control of a national association. The committee for Arkansas was: T. B. Mills, J. M. Pomeroy, J. N. Smithee, A. R. Winfield and W. A. Webber.

In course of time a call was issued for a state convention by a committee consisting of T. B. Mills, Pulaski County; Thomas Boles, Yell County; Benjamin Thomas, White County; W. C. Stout, Faulkner County, and T. D. Berry, Franklin County, to be held at Little Rock, February 1, 1877, of all county organizations or bodies engaged in forwarding immigration for the purpose of uniting all in a state association. Owing to the legislature being in session at the time, the attendance was large. A constitution and set of by-laws were adopted, which provided, among other things, that there should be one vice president for each county of the State, who was to organize societies where none existed and affiliate them with the state association.

The officers of the state association were: T. B. Mills, Pulaski County, president; Jessie Turner, Crawford County, vice president; J. D. Durden, Pulaski County, recording secretary; W. A. Webber, Pulaski County, corresponding secretary; W. E. Warren, Nevada County, corresponding secretary; J. G. Batten-

field, Pope County, corresponding secretary; Logan H. Roots, Pulaski County, treasurer. The annual meeting of the association was to be held at Little Rock on the second Tuesday of October of each year. The proceedings of the convention were printed and distributed.

The work above outlined was carried forward for some years, with more or less success, and many thousand copies of literature to induce immigration were sent broadcast over the northern and northwestern states. The state legislature, in the establishment of a department of mines, manufactures and agriculture, included immigration for a time. One result of this action was the creation of a permanent exhibit of the field, garden, mineral and other products of the soil at the state house, Little Rock, which proved a good advertisement for immigration.

In July, 1868, J. M. Lewis acted as commissioner of immigration and state lands. He was succeeded October 15, 1872, by W. H. Grey. J. N. Smithee followed in June 5, 1874. But there was at the time, as Colonel Smithee states in his report to Governor Garland, no official commissioner of immigration.

ADVERTISING AT UNIVERSAL EXPOSITIONS.

The exhibit of the resources of Arkansas at the World's Fair, Chicago, 1893, was perhaps the greatest ever made by the State. The legislature made an appropriation of \$15,000.00, which was supplemented by a fund of \$20,000.00 raised by the Arkansas World's Fair Association. Two hundred and fifty thousand pamphlets and booklets were distributed there. Several counties and cities made notable efforts to draw attention to Arkansas from the hundreds of thousands of visitors.

Prof. Josiah H. Shinn, our educational commissioner, prepared for the state board, at the instigation of James Mitchell, a pamphlet of 100 pages, entitled "Resources of Arkansas," which was printed in an edition of many thousands and distributed at Chicago. It found lodgment in the emigration bureaus and great libraries of every country on the globe.

Jefferson County alone sent 10,000 finely printed and illustrated pamphlets, descriptive of its sources of wealth. Something was also done at the previous expositions held in Philadelphia, 1876, Louisville, 1883, New Orleans, 1885—and the most

recent one, 1903, at St. Louis. The miniature bales of cotton sent by the immigration bureau of Jefferson County, J. M. Lucey, commissioner, of Pine Bluff, were eagerly sought for by Europeans, and Professor Shinn says that he could have given away 100,000 of them had they been available.

The work of individuals, such as General McRae of Searcy, Senator Crockett of DeWitt and others has been a valuable adjunct to our immigration.

GENERAL EFFECTS.

It is difficult to estimate the particular results of these efforts, but the effect in general was good. Immigrants from northern, eastern and southern states began to come to Arkansas. The aggregate of these people reached in the course of years several hundred thousand. For the most part they were typical Americans, and intelligent, self-reliant and resolute citizens. Almost all brought sufficient wealth to enable them to make a successful start in their new homes. Nebraska, Iowa and other states of the north sent many of their sons and daughters to the temperate zone of Arkansas. Indiana and Illinois farmers, when their lands rose to \$50.00 and \$100.00 an acre, sent their younger generation to our State where hundreds of thousands of acres of fertile land could be purchased at from two to five dollars an acre. The middle states and those of New England, as well as the southern states of Georgia, Mississippi and Tennessee, heard of the wonderful resources of Arkansas and contributed a considerable number of desirable citizens to our population. The census, on these accounts, shows that Arkansas possesses a population whose great majority is composed of Americans.

GERMAN COLONISTS.

The year 1876 witnessed the establishment of several German colonies in Logan and adjacent counties, whose center became New Subiaco.

These were Catholic and came under the direction of two priests of the order of St. Benedict of the Abbey of St. Meinard, Indiana. The coöperation of Bishop Fitzgerald with the immigration societies, railroad land agents and the general movement of the times, made this and subsequent colonizations of Germans,

Poles and other nationalities successful ventures. Several thousands of sturdy German people came from Indiana, Pennsylvania and Europe, and grouped around the primary settlements in Logan, Franklin, Johnson and Yell counties. Little Rock, Fort Smith and other cities soon felt an increase in the number of their best citizens from these colonies. Churches and schools were established in every settlement. A magnificent monument to the intelligence and industry of these German immigrants is the composite building of abbey, college and church of New Subiaco, which is in the form of an immense quadrangle, with an inner court, four-story and basement, whose estimated cost is \$500,000.00.

OTHER GERMAN COLONIES.

In January, 1879, several German families under the leadership of Rev. Charles Steurer, of the Order of the Holy Ghost, came from Pittsburg, Pennsylvania, to the vicinity of Morrilton, Johnson County. Father Strub, the successor of Father Steurer, succeeded in bringing several hundred German families to Morrilton, Conway and vicinities. A few hundred worthy German families came from Germany, Switzerland and such German states as Indiana, Illinois and Pennsylvania, in the 80's, and settled in and around Pocahontas, Paragould and Jonesboro.

LUTHERAN GERMANS IN THE RICE BELT.

More than 200 German families of the Lutheran religion established themselves, 1885, at Stuttgart, on Grand Prairie, Arkansas County, and at Ulm and other points on the Cotton Belt Railway. They came chiefly from Illinois, but naturally attracted relatives and friends from other states and from Germany. Their honesty, sobriety and intelligent cultivation of the soil have made the prairie lands to bloom with bumper crops. It is here that the celebrated rice belt centers, where the growth of the rice plant has surpassed all expectations.

Other parts of the State have received desirable German immigrants, who came in single families, or small groups, and found homes with the aid of German settlers, or immigration agents. There are but few counties in the State that do not rejoice in the possession of some German settlers.

FRENCH SETTLERS.

There is no special colony of French settlers in the State. At Conway fifty or more French families own fine farms. At Morrilton there are some French families. Throughout the State may be found a respectable number of people of French blood, some of whom came from France and others from Canada in recent years.

POLISH IMMIGRANTS.

A settlement of 200 Polish families from Chicago and vicinity was established at Marche, sixteen miles north of Little Rock, 1880, which has had a slow, though reliable, growth. Little Rock, Pine Bluff and other near-by towns have profited by driftings of these people, whose industry and uprightness have made them model American citizens.

ITALIAN COLONIES.

Through the influence of a wealthy land owner in Chicot County, a resident of New York, Austin Corbin, 200 Italian families arrived from Italy, 1894, and settled at Sunny Side. Soon after their arrival an Italian priest, Father Bandini, was secured by Bishop Fitzgerald to attend their spiritual wants. It became evident within a few years that these people who had lived in the mountainous regions of northern Italy could not very easily acclimatize themselves in the lowlands of the Mississippi River delta. Three-fourths of the number moved to a new location near Springdale, under the guidance of their pastor, and established the rural village of Tontitown. They have prospered here exceedingly well, and have attracted annually quite a number of their distant countrymen.

Tontitown may be considered the only Italian settlement in Arkansas where Italians have made up their minds to become American citizens.

The plantations at Sunny Side, after the depletion of people in consequence of the migration to Tontitown, gradually secured additional families from Italy, so that there are about 200 families scattered on three or four large plantations. They find compensation for their labor, in spite of sickness and other impediments, in the wonderful richness of the land. The annual

rental is six dollars an acre, and so great is their industry and economy that within a few years families return to Italy with several thousand dollars each, and others came to take their places. These people do not buy land and become settlers, and owing to their foreign allegiance and duties as citizens of a foreign government, all of which brings some oversight and protection on the part of the officials of their nation, their presence is not as desirable as might be.

The great need of farm hands forces the large planters to utilize any kind of labor. The railroads, sawmills and manufacturing plants have drawn away such a considerable number of negroes from the cotton plantations that it is absolutely necessary to have some substitute until a different system of farming is adopted. This condition of affairs is intensified year by year by the rapid growth in the south of all departments of human activity.

What has been said of Sunny Side will apply to New Gascony, where at times twenty-five or more Italian families have been working on the plantations of John M. Gracie, the largest cotton planter in the State, and one of the most successful.

OTHER FOREIGN SETTLERS—AN IRISH COLONY.

Excepting the Irish colony of Fort Smith and equivalent to a small colony of Irish at Little Rock, 1848-50, no body of Irish people have come to the State, although individual families from Ireland and from several northern and eastern states have immigrated in considerable numbers.

BOHEMIAN COLONISTS.

Twenty-five or more Bohemian families came from Illinois about 1880 and settled a few miles south of Dardanelle. A few hundred Bohemians are to be found at several of the railroad centers of the State, Little Rock, Pine Bluff and Texarkana, having come as laborers and remaining as settlers. The number of this race in the State is estimated at 500.

SYRIAN, SLAVONIAN AND GREEK IMMIGRATION.

Twelve miles north of Stuttgart a colony of Slavonians settled about 1895. They have become prosperous farmers, and have attracted to that vicinity a small number of their country-

men. Greeks, as well as Slavonians, are employed in large gangs at the hardwood mills in the southeastern part of the State, and on some public works. They are first-class laborers, and a few of them become settlers, and discard a nomadic life.

Syrians seek the towns more than the country, and generally wish to become small merchants, after having been peddlers of goods for a time. They are not a sturdy race, but lead honest lives, and gradually become Americanized. Their influx has been for the most part within the past ten years, and their numbers in the entire State may be one thousand.

CHINESE IMMIGRANTS.

About the year 1875 Maj. I. B. Hall and Col. Ben F. Richardson of Jefferson County, Maj. John D. Adams of Pulaski County, Colonel Flournoy of Lincoln County, and other planters along the Arkansas River imported from China or brought from California more than 100 Chinamen to work on their cotton plantations, the majority going to work on the plantation of Colonel Richardson at Cornerstone. In the years 1880-81-82-83 more than 100 of the Chinese worked on the plantation of John M. Gracie, New Gascony.

They worked in squads under a foreman of their own race, and were good and industrious laborers. Each man used a half pound of opium a month, which then cost from \$15.00 to \$18.00 a pound. This feature of their life, with the cost of food, clothing and other necessaries, made them too expensive to the planters when cotton sold for no more than five or six cents a pound. Mr. Gracie let them go and they drifted to Pine Bluff, Little Rock and other places where the laundry business was good—only one remains at New Gascony.

SOURCES.

Books—"Pioneers and Makers of Arkansas History," Josiah H. Shinn, 1908-10; "School History of Arkansas," Josiah H. Shinn, 1900; "History of Arkansas," Fay Hempstead, 1900; "History of the Catholic Church in Arkansas," J. M. Lucey, 1906.

Pamphlets—"Northwestern Arkansas, Sebastian County and Fort Smith," James P. Henry, August, 1871; "Resources of the State of Arkansas," James P. Henry, 1873; "Biennial Report of the Commissioner of State Lands," J. N. Smithee, October 1, 1874, to September 30, 1876; "The New Arkansas Travelers," being letters of editors on excursion through Arkansas, September 28, 1875, T. B. Mills & Co.; "History of the Northwestern Editorial Excursion," 1876, T. B. Mills & Co.; "Blocher's

Arkansas Land Guide, 1876," W. D. Blocher; "Jefferson County, Arkansas," May, 1877, J. M. Lucey, for Jefferson County bureau; "Jefferson County, Arkansas," May, 1888, J. M. Lucey, for Jefferson County bureau; "Jefferson County, Arkansas," May, 1893.

The following and other important documents were kindly sent to the writer through the solicitation of Congressman Hon. Joe T. Robinson, by the commissioner, William C. Durand:

"History and Growth of United States Census, 1790-1890," by Carroll D. Wright, commissioner of labor, and William C. Hunt, chief statistician, twelfth census; "A Century of Population Growth, from First Census of United States to Twelfth, 1790-1890," by S. N. D. North, director.

N. B.—At the time this volume goes to press, July, 1911, the statistics of the census of 1910 had not been classified and published, and will not be until near the end of 1911. That is why nothing but the population of Arkansas is given here.

HISTORY OF WACHITA CONFERENCE.

BY W. P. WHALEY.¹

The Wachita² Conference, Methodist Episcopal Church, South,
From the Division of the State into two Con-
ferences in 1854 to 1866.

The minutes of the Arkansas conference for 1853 show that there were in the State at that time eight presiding elders' districts, sventy-five pastoral charges, 15,888 white members, 2,897 colored members, 223 local preachers, and ten preachers holding the superannuate or supernumerary relation; a total Methodist population of 19,018. Embracing the whole State, the territory of the conference was so large that it was difficult for the preachers to attend the sessions of the conference. The general conference of the Methodist Episcopal Church, South, which met in Columbus, Georgia, in 1854, divided the Arkansas conference by a line running from east to west across the State. This line began at the mouth of White river, ran thence up said river to the mouth of Des Arc bayou, thence up said bayou to the mouth of Cypress bayou, thence up said bayou to its head, thence down the Palarm creek to the Arkansas river, thence up said river to the mouth of the Petit Jean, thence along the line between Yell and Perry counties, and thence due west to the western line of the State.

The conference north of this line retained the name Arkansas conference, and the conference south of this line was named

¹William Pearson Whaley was born November 18, 1869, in Drew Nevada County in the legislatures of 1907 and 1909. Young Whaley County, Arkansas. His father, a local Methodist minister, represented was educated in the public schools and at Hendrix College. He was licensed to preach in 1888 and joined the Little Rock conference of the Methodist Episcopal Church, South, December, 1893. He has served as pastor at Warren, Amity, Benton, DeQueen, Stuttgart, Pine Bluff, Hope and Magnolia. He is secretary of the Little Rock conference. He is author of "The Divinity Within Us."—EDITOR.

²Usually spelled Ouachita, but in the general minutes of the M. E. Church, South, always spelled as here.

the Wachita conference, taking its name from the Wachita river, which runs from the northwest to the southeast across the middle part of this section embraced in the Wachita conference.

The Wachita conference met in its first session November 22-27, 1854, at Washington, Arkansas. Bishop Kavanaugh presided, and W. P. Ratcliff was secretary. In the division 8,675 members fell to the Wachita conference. At the first session a net gain of 765 was reported.

William Winburn, Enoch L. Gaddie, Littleton H. Johnson, David W. Epps and Elijah Crowson were admitted on trial in the conference. B. R. Truly and Joseph M. Stephenson were readmitted.

There was collected for superannuated preachers and the widows and orphans of preachers \$260.30, and applied as follows: Jacob Whitesides, \$71.90; John Harris, \$71.90; W. B. Mason's children, \$28.50, and W. P. Ratcliff, \$88.00. The conference paid for missions \$1,760.00; for Sunday schools, \$106.00; for American Bible Society, \$269.00.

Another district was formed, the Monticello, and the following appointments were made:

1854-55.

	White Members.	Colored Members.	Local Preachers.
Little Rock District, A. R. Winfield, P. E.			
Little Rock sta., A. B. Winfield.....	166	274	2
Little Rock et., A. L. P. Green.....	182	....	3*
Rockport et., R. H. Carter.....	290	12	5
Upper Saline miss., Burton Williams*.....	....	....	....
Perryville miss., L. H. Johnson.....	163	6	....
Brownsville et., D. L. G. McKenzie.....	162	46	2
Washington District, T. E. Garrett, P. E.			
Washington sta., Wm. C. Young.....	52	....	2
Washington et., B. C. Weir.....	407	39	4
Blue Bayou et., J. H. Blakely.....	398	70	10
Arkadelphia et., W. B. Baxter.....	326	63	11
Montgomery et., Thomas Hunt.....	260	....	6
Dallas miss., E. L. Gaddie.....	140	....	2
Little River et., C. P. Turrentine.....	71	....	1
Camden District, W. P. Ratcliff, P. E.			
Camden sta., Samuel Morris.....	81	58	....
Camden et. and African miss., J. B. Annis and D. W. Epps.....	403	143	5
El Dorado and Wesley sta., J. C. L. Aikin*.....	....	....	1
El Dorado et., J. J. Crouch.....	252	135	....

	White Members.	Colored Members.	Local Members.	Preachers.
Lapeal et., John M. Bradley.....	222	85	3	
Magnolia et., J. M. Stevenson.....	348	19	6	
Lewisville miss., Wm. J. Scott.....	60	17	1	
Pine Bluff District, Wm. Moores, P. E.				
Pine Bluff sta., John Pryor.....	92	59	1	
Pine Bluff et., Elijah Crowson*.....	.....	.....	.....
Richland African miss., Fountain Brown.....	4	76	.....
Plum Bayou et., J. E. Caldwell.....	109	111	3	
Lehi et., Wm. T. Anderson.....	350	17	9	
Princeton et., A. Avery and H. R. Withers	628	136	10	
Hampton et., Wm. Winburn.....	381	13	4	
Warren et., J. P. Hulse.....	390	190	7	
Monticello District, R. M. Morgan, P. E.				
Monticello et., R. F. Withers.....	224	30	6	
Lacey et., S. Sparrier.....	258	60	10	
Hamburg et., R. M. Kirby.....	130	12	1	
Napoleon et., M. C. Manley.....	64	148	.....
Napoleon miss., James Rice.....	.....	.....	.....
Columbia et., B. R. Truly.....	132	127	3	
Arkansas et., J. F. Carr.....	116	9	2	

*New work formed or name changed and number of members not given.

1855-56.

The second session of the Wachita conference was held at El Dorado, November 7-18, 1855. Bishop Pierce presided and William C. Young was secretary. This was Bishop Pierce's first episcopal visit to Arkansas, and his coming was awaited with eagerness by the Methodists of this section, for he was famed the peerless pulpit orator.

The year had been one of growth for the church, the net increase in membership being 904. There was collected for missions \$1,237.00; for American Bible Society, \$1,600.00, and for the conference claimants \$185.00. Five men were admitted on trial: Edwin W. Ware, Marshall H. Wells, Littleberry Southerland, Elisha Stevens and Joshua J. Kennedy. Two were readmitted: Hezekiah W. Balch and Joseph Turrentine.

The appointments made at this conference were as follows:

	White Members.	White Probationers.	Colored Members.	Colored Probationers.	Local Preachers.
Little Rock District, A. R. Winfield, P. E.					
Little Rock sta., D. L. G. McKenzie.....	125	5	150	25	1
Bayou Meto et., supplied*.....	.....	.....	.....	.....
Benton ct., Burton Williams.....	370	75	48	12	4

	White Members.	White Probationers	Colored Members.	Colored Probationers.	Local Preachers.
Rockport et., J. E. Caldwell.....	162	43	16	.....	5
Saline miss., S Sparier.....	144	14	6	.....	3
Perryville miss., E. W. Ware.....	59	52	5	.....	3
Brownsville et., A. L. P. Green.....	187	117	20	5	5
Washington District, L. S. Marshall, P. E.					
Washington sta., A. B. Winfield.....	39	18	.....	31	....
Hempstead et., J. M. Stevenson.....	401	41	16	.....	1
Blue Bayou et., B. C. Weir.....	321	137	.....	.....	10
Arkadelphia et., Samuel Morris.....	311	46	63	6	13
Montgomery et.. E. Crowson.....	291	.....	5	.....	7
Dallas miss. J. Kennedy.....	120	30	1	.....	3
Paraclifta et., C. P. Turrentine.....	102	20	8	32	....
Richmond miss., Jos. Turrentine*	.....	.....	.....	.....	....
Camden District, W. P. Ratcliff, P. E.					
Camden sta., J. B Annis.....	80	12	20	46	....
Wachita et., W. C. Young.....	366	66	.....	.....	6
Wachita African miss., supplied.....	.....	.....	.....	128	....
El Dorado sta., J. M. Bradley.....	210	46	.....	39	1
Lapeal et., J. W. Owen.....	233	50	92	60	2
Magnolia et., W. B. Baxter and E. Stevens	338	61	49	1	5
Lewisville miss., D. W. Epps.....	82	59	23	22	2
Red River et., W. J. Scott*	.....	.....	.....	.....	....
Pine Bluff District, Wm. Moores, P. E.					
Pine Bluff sta., H. R. Withers.....	50	15	19	17	....
Jefferson et., J. F. Carr.....	37	19	22	7	1
Richland miss., Thomas Hunt.....	4	2	114	30	....
Plum Bayou et., J. J. Crouch.....	79	28	25	6	4
Swan Lake miss., L. Southerland*	.....	.....	.....	.....	....
Lehi et., W. T. Anderson.....	372	80	12	7	9
Princeton et., J. Pryor and M. H. Wells	537	130	133	116	10
Hampton et.. A. H. Avery.....	349	75	13	30	3
Warren et., Wm. Winburn and E. L. Gaddie	282	100	80	20	5
Principal Tulip Female Seminary, Benjamin					
Agent American Bible Society. A. Hunter.					
Monticello District, R. M. Morgan, P. E.					
Monticello et., J. H. Blakely.....	236	66	.....	.....	6
Lacey et., Fountain Brown.....	203	52	.....	30	8
Hamburg et., J. P. Hulse.....	67	20	46	.....	1
Napoleon miss., L. H. Johnson.....	32	7	60	14	....
Auburn et., H. W. Balch*	.....	.....	.....	.....	....
Columbia et., B. R. Truly.....	132	.....	127	.....	3
Bayou Mason et., R. F. Withers*	.....	.....	.....	.....	....
Arkansas et., R. M. Kirby.....	96	40	9	.....	3
Agent Traet Society, Peter Haskew.					

*New charge, or name changed, number members not given.

Note that in this year there were only four charges called "stations"—only four churches able to employ a pastor his whole time. In this period the salary of a Methodist preacher—whether on mission, circuit, station or district—was \$150.00

per year, with an addition of \$50.00 if he had a wife, and \$25.00 for each child. This was munificent in comparison with the first years of the century, when the salary was \$64.00 per year. In addition, the charge was expected to furnish the preacher a home and pay his traveling expenses. McTyeire says, "Their traveling expenses were to include ferriage, horseshoeing, provisions for themselves and their horses on the road when they necessarily rode a distance." At this time a new rule had been made, allowing a preacher to receive money, if offered, for performing the marriage ceremony; but he was not allowed to accept anything for burial or baptismal services.²

At this time, in this conference, our people lived in the rural sections. The towns were small and the country thinly populated. A preacher's circuit included any number of preaching places, from twelve to twenty-eight. These were far apart, in neat frame churches, log meeting houses, school houses, private homes, under bush arbors and at camp sheds. The roads were bad and the streams were not bridged. It was necessary that the preacher have a good horse that could make long trips over rough roads in time for preaching hour, and swim swollen streams without getting the saddlebags wet. White people and negroes, masters and slaves, were members of the same congregation, and they worshipped together at the same time and place. A certain section of the place of worship was set aside for the colored people, and all the privileges of the congregation were theirs. They sang, were called on to pray and to testify, accepted propositions, were penitents, joined the church and were baptized along with the white people. The preachers in the conference were white men, but many negroes were licensed and ordained as local preachers. The conference sent out its preachers to be pastors to both races. Usually the majority of the members were white, but on many charges the majority of the members were colored. Pastoral charges that were made up mainly of colored people were known as African missions. The table above shows that the Richland mission included six white people with 144 negroes.

²McTyeire's History of Methodism.

1856-57.

The Wachita conference met at Princeton November 12-17, 1856. Bishop Pierce again presided, and Rev. Jesse S. McAlister was secretary. A net increase of 479 white and 680 colored members was reported, making a total membership of 9,037, besides 2,824 on probation. The financial report shows: Collected for conference claimants and to make up the deficiencies of those who had not received their regular allowance, \$473.00; missions, \$4,360.00; American Bible Society, \$2,321.00; tract society, \$911.00; Sunday schools, \$190.00. Three preachers were located, three took the supernumerary relation, and two remained on the superannuate list. Ten new men were admitted on trial: John W. Mann, Franklin F. Bond, Benjamin Kellogg, Anderson Putman, Archelaus Turrentine, James M. Goodwin, Thomas B. Atterbury, Malcolm Turner, Robert L. Jones and Elijah Smoot. One came by transfer: W. J. McFarland. There were appointed to work fifty-five effective men, as follows:

	White Members	White Probationers	Colored Members	Colored Probationers	Local Preachers
<i>Little Rock District. Russel M. Morgan, P. E.</i>					
Little Rock sta., H. R. Withers.....	109	12	---	---	1
Little Rock African miss., supplied.....	---	---	219	4	---
Bayou Meto et., E. L. Gaddie.....	158	42	37	---	2
Benton ct., Wm. J. Scott.....	392	39	45	---	4
Mill Creek ct., L. S. Marshall*	---	---	---	---	---
Rockport et., Fountain Brown.....	148	18	---	---	2
Saline miss., L. H. Johnson.....	168	27	13	---	1
Perryville ct., Thomas Hunt.....	126	96	1	10	4
Brownsville et., J. E. Caldwell and F. F. Bond	301	66	---	---	3
<i>Washington District, Wm. Moores, P. E.</i>					
Washington sta., D. G. L. McKenzie.....	54	34	30	24	---
Hempstead et., Samuel G. Morris.....	290	85	40	1	2
Blue Bayou et., W. J. McFarlane.....	480	98	31	1	7
Arkadelphia et., J. M. Stevenson.....	245	68	31	---	12
Caddo et., T. B. Atterbury*	---	---	---	---	---
Mt. Ida et., Joshua Kennedy*	---	---	---	---	---
Dallas et., Elijah Smoot.....	130	50	4	1	4
Paraclifta et., H. W. Balch.....	150	90	50	40	3
<i>Camden District. Jerome B. Annis, P. E.</i>					
Camden sta., A. B. Winfield.....	84	31	54	41	---
Wachita et., and African miss., B. C. Weir and Wm. B. Baxter.....	260	82	140	73	4

	White Members.	White Probationers.	Colored Members.	Colored Probationers.	Local Preachers.
El Dorado ct., J. M. Bradley and Benjamin Kellogg	220	65	100	....	1
Lapeal et., J. M. Owen.....	279	56	174	50	4
Magnolia ct., J. P. Hulse and Malcolm Turner	480	42	30	10	9
Lewisville et., M. H. Wells.....	75	45	....	70	1
Red River miss., R. M. Kirby.....	57	36	56	76	1
Pine Bluff District, A. R. Winfield, P. E.					
Pine Bluff sta., A. L. P. Green.....	70	60	35	....	....
Jefferson et., J. F. Carr.....	39	35	28	13	....
Jefferson African miss.. supplied* .....	....	....	....	....	....
Richland miss.. A. Turrentine.....	4	6	62	50	....
Plum Bayou et., W. T. Anderson.....	94	19	11	8	5
Swan Lake miss., L. Southerland and Robt. L. Jones	4	7	51	10	....
Lehi et., R. F. Withers.....	333	252	33	5	9
Princeton et., J. M. Goodwin.....	600	105	161	77	9
Hampton et., Wm. Winburn.....	118	54	23	30	4
Warren et., E. Crowson.....	380	65	128	37	4
Principal Tulip Female Seminary, Benjamin Watson.					
Professor in Tulip Female Seminary, J. S. McAlister.					
Monticello District. J. H. Blakely, P. E.					
Monticello et., Peter Haskew.....	229	91	22	44	8
Lacey et., A. Putman.....	150	28	22	6	8
Hamburg et., John Pryor.....	93	65	55	....	1
Napoleon miss., Ed W. Ware.....	17	134	52	....	2
Auburn et., D. W. Epps.....	16	4	39	38	....
Lake Village ct., B. Williams and J. W. Mann* .....	....	....	....	....	....
DeWitt et., J. J. Crouch* .....	....	....	....	....	....
Agent A. B. Society, A. Hunter.					
Agent Tract Society, C. P. Turrentine.					
Agent Camden Female College, W. P. Ratcliff.					

*New work formed or name changed and statistics not given.

1857-58.

The conference met in Little Rock November 4-12, 1857. Bishop Kavanaugh presided and Rev. J. S. McAlister was secretary. This was the bishop's first visit to Arkansas. His fame as a preacher had long been heard in these parts, and his coming was a great event in those days. Jewell's History of Methodism in Arkansas records a glowing account of the bishop's preaching during this tour of Arkansas.

During the year there had been a net increase of 257 in the white membership and 86 net decrease in the colored membership. There was collected for conference claimants, and to

make up salary deficiencies, \$629.00; for missions, \$4,100.00; for tracts, \$165.00; for Sunday schools, \$73.00; for American Bible Society, \$2,322.00. J. W. Owen had died; H. W. Balch was located; Joseph Turrentine, A. Avery, J. E. Cobb, J. M. Stevenson and J. E. Caldwell took the supernumerary relation, and John Harris, Jacob Whitesides and Thomas Hunt took the superannuate relation. Seven new men were admitted into the conference on trial—George H. Warring, John Dixon, Augustus Chamberlain, George W. Livingston, Horace E. Bickers, Calvin M. Gentry and Thomas A. Graham. The appointments made at this conference were as follows:

	White Members	White Probationers	Colored Members	Colored Probationers	Local Preachers
Little Rock District, J. B. Annis, P. E.					
Little Rock sta., D. L. G. McKenzie.....	123	13	219	4	1
Little Rock African miss., M. C. Manley.....	.....	65	.....	.....	2
Bayou Meto et., Ed W. Ware.....	138	19	13	.....	6
Benton et., L. S. Marshall.....	250	21	.....	18	2
Mill Creek et., H. E. Bickers.....	71	38	15	.....	3
Rockport et., Fountain Brown.....	152	41	5	.....	1
Saline miss., W. J. Scott.....	146	96	1	10	4
Perryville et., L. H. Johnson.....	126	66	.....	.....	3
Brownsville et., W. J. McFarlane.....	301	.....	.....	.....	.....
Washington District, J. C. L. Aikin, P. E.					
Washington sta., D. W. Epps.....	59	27	55	26	1
Hempstead et., Samuel G. Morris.....	187	47	6	1	1
Center Point et., G. W. Livingston*	.....	.....	.....	.....	.....
Murfreesboro et., J. W. Mann*	.....	.....	.....	.....	.....
Arkadelphia et., J. M. Bradley.....	245	68	31	.....	12
Caddo miss., E. Smoot.....	248	87	5	5	6
Mt. Ida miss., Robert L. Jones.....	277	31	5	.....	5
Dallas et., Malecom Turner.....	129	120	4	.....	4
Paraelifta et., G. H. Warring.....	147	.....	44	.....	3
Camden District, Wm. Moores, P. E.					
Camden sta., W. P. Ratcliff.....	91	122	.....	39	2
Camden African miss., John Dixon.....	.....	.....	58	39	.....
Wachita et., Wm. Winburn and B. Kellogg	271	64	62	22	3
EI Dorado et., A. B. Winfield and A. Chamberlain	343	82	157	18	2
Lapeal et., B. C. Weir.....	277	46	174	50	4
Magnolia et., Josiah Greer.....	491	101	39	.....	16
Falcon et., J. P. Hulse*	.....	.....	.....	.....	.....
Lewisville et., C. M. Gentry.....	98	63	18	80	2
Red River miss., T. A. Graham.....	49	.....	100	.....	2
Pine Bluff District, A. R. Winfield, P. E.					
Pine Bluff sta., H. R. Withers.....	89	14	12	.....	1
Jefferson et., supplied	43	14	.....	.....	.....
Jefferson African miss., A. Putman.....	.....	.....	59	28	.....

	White Members.	White Probationers	Colored Members.	Colored Probationers.	Local Preachers.
Richland African miss., A. Turrentine.....	.....	.....	36	6	.....
Plum Bayou et., F. F. Bond.....	94	42	13	2	4
Old River et., supplied*	.....	.....	.....	.....	.....
Swan Lake miss., L. R. Southerland.....	8	12	90	16	.....
Lehi et., R. F. Withers, C. O. Steel.....	383	110	10	.....	6
Princeton et., W. T. Anderson and J. F. Carr	554	170	.....	.....	8
Princeton African miss., supplied.....	.....	.....	109	138	.....
Warren et., E. Crowson and J. J. Kennedy	321	51	181	10	4
Hampton et., J. M. Goodwin.....	201	55	28	25	1
Agent A. B. Society, A. Hunter.	.....	.....	.....	.....	.....
Tulip Female College, B. Watson, principal, and J. S. McAlister, pro- fessor of languages.	.....	.....	.....	.....	.....
Monticello District, J. H. Blakely, P. E.	.....	.....	.....	.....	.....
Monticello et., A. L. P. Green.....	300	64	59	7	7
Lacey et., J. J. Crouch.....	210	14	35	.....	7
Hamburg et., John Pryor.....	93	65	55	.....	5
Napoleon sta., M. H. Wells.....	53	45	61	1	1
Belleville miss., E. L. Gaddie*	.....	.....	.....	.....	.....
Auburn et., R. M. Morgan.....	21	7	38	20	.....
Lake Village et., Burton Williams.....	83	47	20	40	1
Macon Hills et., F. M. Rhodes*	.....	.....	.....	.....	.....
DeWitt et., T. B. Atterbury.....	113	32	2	.....	4

Agent Tract Society, Peter Haskew.

Without appointment, C. P. Turrentine and Wm. Baxter.

*New work formed or name changed and no statistics given.

Sometimes two pastors were assigned to the same work. One was senior and the other junior preacher. They usually made their rounds on the large circuits, one two weeks behind the other, thus giving each appointment two sermons a month; but sometimes they were a month apart, taking two months for each to complete his round.

1858-9.

The conference met November 3, 1858, in Arkadelphia. Bishop Early presided, and Rev. J. S. McAlister was secretary. There was a net increase of 473 in the white membership, but a net decrease of 38 in the colored membership. The financial showing for the year: Collected for conference claimants and to make up deficiencies in salaries, \$731.00; for missions, \$5,000.00. Julius A. Stanley and Robert C. Atchley were admitted on trial in the conference. L. Southerland, C. P. Turner, E. A. Stevenson, J. J. Crouch, Peter Haskew, Joseph Turrentine

and Richard F. Withers located. A. Avery, J. C. L. Aikin, J. M. Stevenson and R. M. Morgan took the supernumerary relation. John Harris, Jacob Whitesides and Thomas Hunt remained in the superannuate relation. W. C. Haislip, Simeon R. Walker, Elam A. Stevenson, James E. Cobb, William R. Davis and Cyrus P. Swinney were received by transfer from other conferences.

The appointments made at this session were as follows:

	White Members	White Probationers	Colored Members	Colored Probationers	Local Preachers
Little Rock District, J. B. Annis, P. E.					
Little Rock sta., D. G. L. McKenzie.....	112	21	204	11	1
Bayou Meto et., Robert L. Jones.....	126	25	16	8	4
Benton et., E. Crowson.....	296	27	21	....	7
Saline miss., Wm. J. Scott.....	190	18	....	....	1
Mill Creek ct., supplied.....	93	36	14	22	....
Rockport et., L. H. Johnson.....	129	48	11	....	4
Perryville et., T. B. Atterbury.....	96	36	12	....	4
Brownsville et., Fountain Brown.....	266	40	58	....	8
Des Arc sta., John F. Carr*.....	....	....	....	....	....
Washington District, J. M. Bradley, P. E.					
Washington sta., W. C. Haislip.....	69	14	83	6	2
Hempstead et., W. T. Anderson.....	203	143	140	40	2
Columbus African miss., J. E. Cobb*.....	....	....	....	....	....
Center Point et., J. E. Caldwell.....	398	47	59	....	5
Murfreesboro miss., H. W. Balch.....	217	71	2	....	5
Arkadelphia et., M. C. Manley.....	190	300	35	101	7
Clark et., J. R. Greer*.....	....	....	....	....	....
Caddo et., E. Smoot.....	144	86	10	....	4
Mt. Ida miss., J. J. Kennedy.....	48	93	....	....	3
Dallas miss., E. L. Gaddie.....	140	115	4	....	6
Paracifta et., Maleom Turner.....	134	114	16	....	5
Richmond miss., G. W. Warring*.....	....	....	....	....	....
Camden District, Wm. Moores, P. E.					
Camden sta. and African miss., W. P.					
Ratcliff and David W. Epps.....	147	58	78	25	5
Wachita et., W. Wilburn and G. W. Livingston.....	295	109	89	68	2
El Dorado et., T. A. Turner and Wm. Chamberlain.....	250	83	44	50	2
Lapeal et., John Pryor.....	162	42	82	8	5
Magnolia et., Benjamin J. Kellogg.....	229	91	29	6	9
Falcon et., Cyrus P. Swinney.....	398	130	24	4	4
Lewisville et., supplied.....	75	50	8	46	2
Red River et., John W. Mann.....	57	19	32	5	2
Sulphur Springs miss., supplied*.....	....	....	....	....	....
Pine Bluff District, A. R. Winfield, P. E.					
Pine Bluff sta., James M. Goodwin.....	120	15	25	....	1
Jefferson et., F. F. Bond.....	50	20	....	....	1
Jefferson African miss., supplied.....	....	....	30	....	....

	White Members.	White Probationers.	Colored Members.	Colored Probationers.	Local Preachers.
Richland et., A. Turrentine.....	3	.....	34	4	4
Plum Bayou et., Wm. J. McFarlane.....	53	9	18	.....	.....
Old River et., R. M. Morgan*	.....	.....	.....	.....	.....
Swan Lake miss., C. M. Gentry.....	.....	.....	112	.....	.....
Lehi et., A. L. P. Green and R. C. Atchley	385	114	24	.....	10
Tulip and African miss., A. B. Winfield and J. A. Stanley*	.....	.....	.....	.....	.....
Princeton and African miss., H. R. With- ers and C. O. Steele.....	581	207	179	86	9
Warren et., Lewis S. Marshall.....	244	29	39	20	5
Hampton and African miss., S. R. Walker	199	18	51	15	4
Moro miss., R. M. Kirby*	.....	.....	.....	.....	.....
Tulip Female Institute, B. Watson, president and agent; J. S. Mc- Alister, professor of languages.	.....	.....	.....	.....	.....
Agent A. B. Society, A. Hunter..	.....	.....	.....	.....	.....
Monticello District, J. H. Blakely, P. E.	.....	.....	.....	.....	.....
Monticello sta., Samuel Morris.....	347	69	49	10	10
Lacey et., John Dixon.....	201	20	25	.....	8
Hamburg et., B. C. Weir.....	187	10	90	8	1
Napoleon sta., supplied.....	9	11	2	10	.....
Red Fork et., supplied*	.....	.....	.....	.....	.....
Auburn ct., M. H. Wells. No report	.....	.....	.....	.....	.....
Lake Village et., F. M. Rhodes.....	20	60	16	21	.....
Columbia et., Burton Williams*	.....	.....	.....	.....	.....
Macon Hills, Wm. R. Davis. No report	.....	.....	.....	.....	.....
DeWitt et., J. P. Hulse.....	126	50	10	2	5

*New work or name changed and statistics not given.

These appointments indicate both the centers of population in that day and the centers of Methodist influence. The Princeton circuit was the strongest charge in the conference for many years. In 1853 this circuit had a membership of 640 whites and 146 negroes. The town of Tulip was at that time within the bounds of the Princeton circuit. Jewell (page 144) says:

"The town of Tulip was at that time the center of one of the most pleasant and prosperous communities in the State, and was noted throughout the State for its intelligence, refinement and religious culture. It was for many years the home of a large number of prominent Methodist families—the Summervilles, Smiths, Taylors, Butlers, and a number of others of equal prominence."

1859-60.

The conference met November 2-8, 1859, in Monticello. No bishop attended. Andrew Hunter was elected president, and Rev. J. S. McAlister again served as secretary. The church at Monticello had enjoyed a gracious revival and a prosperous year

every way, and was considered strong enough to be made a station at this session. It had been a great year throughout the conference. Revival fires had burned at a number of camp grounds and over the circuits, so that the preachers reported 1,244 net increase in the white membership—nearly fifteen per cent increase. There was collected for the conference claimants and to make up salary deficiencies, \$965.00; and for missions, \$6,000.00. Eight new men were admitted on trial in the conference—Ezekiel N. Watson, William C. Adams, Joseph W. Turnley, William J. Davis, Hugh P. Robinson, James R. Harvey, Perry G. Reynolds, Josiah Y. Corbitt. Three were readmitted—Lewis Garrett, Elam A. Stevenson and James L. Culpepper. Four came by transfer from other conferences—William D. Shea, Cadesman Pope, James Y. Price and Horace Jewell. There were four locations—three remained in the supernumerary and three in the superannuate relation. Two men had died—S. R. Walker and J. J. Kennedy. Thus there was an increase of ten effective men for appointment. The conference was redistricted so as to make seven districts instead of five. The appointments made that session were as follows:

	White Members	E. White Probationers	Colored Members	Colored Probationers	Local Preachers
Little Rock District, D. L. G. McKenzie, P.					
Little Rock sta., supplied.....	109	42	....	....	....
Little Rock African miss., supplied.....	....	....	....	....	....
Liberty and Mound Chapel, Benjamin Kel- logg*	....	....	....	....	....
Bayou Meto et., E. N. Watson.....	143	101	22	30	5
Mill Creek et., E. Crowson.....	153	5	50	....	2
Benton et., supplied	260	24	21	....	6
Saline miss., Hugh P. Robinson.....	161	17	4	....	2
Perryville et., Robert L. Jones.....	148	62	11	2	1
Arkadelphia District, J. M. Bradley, P. E.					
Arkadelphia sta., J. E. Cobb.....	102	6	32	....	1
Clark et., E. Smoot.....	284	46	117	17	8
Tulip and African miss., C. Pope*.....	....	....	....	....	....
Rockport et., W. C. Adams.....	171	54	20	6	5
Hot Springs et., W. A. Chamberlain*.....	....	....	....	....	....
Caddo et., supplied	236	36	10	....	4
Murfreesboro et., B. C. Weir.....	236	69	....	....	4

Wachita Conference Female College, B. Watson, president; J. S. McAlister, professor of languages.

Book and Tract Depository, A. Hunter.

	P. E.	White Members.	White Probationers.	Colored Members.	Colored Probationers.	Local Preachers.
Washington District, J. H. Blakely,						
Washington sta., J. A. Stanley.....	59	18	80	....	....	2
Hempstead and African miss., J. Greer and G. W. Livingston.....	235	190	....	....	....	3
Center Point et., Wm. Winburn.....	295	203	....	....	....	10
Center Point African miss., supplied.....	....	....	....	....	....	....
Paraclifta et., supplied.....	258	210	25	10	6	....
Mine Creek et., E. L. Gaddie*	....	....	....	....	....	....
Ozan et., A. Avery*	....	....	....	....	....	....
Richmond et., L. S. Marshall.....	46	20	....	30	....	....
Columbus African miss., Thomas Hunt.....	....	....	21	55	....	....
Dallas miss., T. B. Atterbury.....	177	155	5	....	....	6
Red River miss., J. P. Hulse.....	150	41	20	5	2	....
Cut-Off African miss., J. M. Stevenson*	....	....	....	....	....	....
Camden District, A. R. Winfield, P. E.						
Camden sta., and African miss., W. C.						
Haislip.....	150	29	69	30	3	....
Wachita et., Burton Williams.....	334	19	91	30	2	....
El Dorado and African miss., E. A. Stevenson.....	....	241	82	72	32	3
Lapeal et., J. Y. Brice.....	200	52	66	33	5	....
Magnolia et., C. P. Swinney.....	349	90	89	....	8	....
Falcon et., C. O. Steele.....	428	97	30	7	5	....
Lewisville et., G. H. Warring.....	81	13	10	....	1	....
Sulphur Rock et., supplied.....	....	....	....	....	....	....
Little Missouri miss., P. G. Reynolds*	....	....	....	....	....	....
Book and Tract Depository, W. P. Ratcliff.						
Pine Bluff District, Samuel Morris, P. E.						
Pine Bluff sta., supplied.....	85	26	3	19	1	....
Jefferson et., M. Turner.....	32	4	....	....	....	....
White Springs and African miss., C. M.						
Gentry.....	....	....	50	....	....	....
Lehi and African miss., R. M. Kirby.....	372	124	18	1	8	....
Princeton and African miss., W. J. Davis.....	279	30	50	....	4	....
Richland and African miss., A. Turrentine.....	7	....	29	7	....	....
Auburn et., Lewis Garrett.....	17	16	59	70	....	....
Red Fork and African miss., J. M. Goodwin and J. Dixon.....	57	100	25	75	3	....
Napoleon sta., F. F. Bond.....	9	11	2	10	....	....
Monticello District, A. B. Winfield, P. E.						
Monticello sta., Horace Jewell.....	325	123	50	24	6	....
Mt. Pleasant and African miss., W. J. Davis*	....	....	....	....	....	....
Lacey et., supplied.....	250	50	20	8	....	....
Hamburg et., J. F. Carr.....	193	97	61	18	2	....
Bartholomew et., John Pryor*	....	....	....	....	....	....
Macon Hills, supplied.....	110	12	30	....	1	....
Lake Village and African miss., H. R. Withers.....	40	20	....	....	1	....
Warren et., J. L. Culpepper and J. R. Harvey.....	258	21	120	21	3	....
Hampton and African miss., T. A. Graham.....	133	13	11	....	....	....

	White Members.	White Probationers	Colored Members.	Colored Probationers.	Local Preachers.
Des Arc District, J. B. Annis, P. E.					
Des Arc sta., M. C. Manley.....	51	17	19	18	3
Brownsville et., Fountain Brown.....	204	77	11	10	5
Oakland Grove et., J. Y. Corbitt*	....	....	....	....	....
St. Charles et., W. J. Scott*	....	....	....	....	....
DeWitt et., L. H. Johnson.....	265	56	10	4	4
Old River and Swan Lake miss., supplied	....	....	90	13	....

A few charges made no report.

*New work or name changed and statistics not given.

1860-61.

The conference met October 24-30, 1860, in Pine Bluff. Bishop Pierce presided, and Rev. J. S. McAlister was secretary. The financial report was as follows: Collected for conference claimants and to make up deficiencies in salaries, \$976.00; for missions, \$5,318.00; for Sunday schools, \$498.00. The net increase of white members was 653, and of colored members 373. The conference lost one man by transfer—W. C. Young. Two had died—Benjamin Kellogg and Jacob Whitesides. Three located—C. P. Swinney, H. R. Withers and J. L. Culpepper. Four took the supernumerary relation—R. L. Jones, J. C. L. Aikin, William Moores and David J. Allen. Four were superannuated—M. C. Manley, W. T. Anderson, J. M. Stevenson and John Harris. Eleven new men were received on trial—William O. Lanier, James M. See, Obediah Burnett, Buckner Abernathy, John J. Partin, Jarrett W. Brandon, John L. Emerson, Robert C. Atchley, Jonathan A. Clower, William W. Echols, Britton G. Johnson. One was readmitted—William C. Young. Four were received by transfer—Joseph G. Word, James H. Warfield, Henry D. McKinnon and W. R. J. Husbands. The appointments were as follows:

	White Members.	White Probationers	Colored Members.	Colored Probationers.	Local Preachers
Little Rock District, D. L. G. McKenzie, P. E.					
Little Rock sta. and African miss., J. A. Stanley.....	134	27	180	30	3
Liberty and Mound chapel, F. Brown.....	33	13	50	....	....

	White Members	White Probationers	Colored Members	Colored Probationers	Local Preachers
Bayou Meto, J. W. Brandon.....	144	121	3	2	8
Mill Creek et., J. L. Samply, E. N. Watson.....	105	15	53	3	1
Benton et., J. J. Partin.....	348	41	19	.....	7
Saline et., supplied.....	155	.....	12	.....	2
Perryville et., M. Turner.....	148	62	11	2	1
Arkadelphia District, A. Hunter, P. E.					
Arkadelphia sta., W. P. Ratcliff.....	120	26	23	18	4
Clark et., Wm. Winburn.....	262	50	75	.....	4
Tulip and African miss., W. R. J. Hus- bands and J. E. Caldwell.....	372	70	155	8	8
Princeton and African miss., E. A. Stev- enson and O. Burnett.....	411	33	78	16	5
Rockport et., E. Smoot.....	143	24	14	7	2
Hot Springs et., W. A. Chamberlain.....	74	10	7	.....	1
Caddo et., T. S. Tyson.....	308	50	.....	.....	.....
Murfreesboro et., B. C. Weir.....	63	22	11	.....	.....
Mt. Ida miss., T. B. Atterbury*	.....	.....	.....	.....	.....
Arkadelphia Female College, J. E. Cobb, president.					
A. B. Society, J. S. McAlister, agent.					
Washington District, John Pryor, P. E.					
Washington sta. and African miss., C. Pope.....	65	10	85	15	2
Hempstead et., J. Greer.....	300	130	.....	.....	.....
Hempstead African miss., supplied.....	.....	.....	41	36	.....
Center Point et., W. H. Frost.....	380	69	.....	.....	9
Center Point African miss., T. Hunt.....	.....	.....	96	17	.....
Paraclifta et., J. M. Goodwin.....	258	210	25	10	6
Mine Creek et., A. Avery.....	60	27	.....	.....	1
Richmond et., Buckner Abernathy.....	67	.....	35	.....	.....
Columbus African miss., supplied.....	.....	.....	38	28	.....
Dallas miss., G. H. Warring.....	121	31	6	.....	3
Polk et., J. L. Emerson*	.....	.....	.....	.....	.....
Red River and African miss., T. A. Graham.....	82	10	.....	.....	1
Camden District, A. R. Winfield, P. E.					
Camden sta., H. Jewell.....	156	38	.....	.....	4
South Camden and African miss., supplied.....	.....	.....	73	33	.....
Wachita and African miss., B. Williams and J. W. Turnley.....	339	172	61	91	2
El Dorado sta., supplied.....	326	84	.....	.....	2
El Dorado et. and African miss., J. P. Hulse.....	.....	.....	114	29	.....
Lapeal et., C. O. Steele.....	225	24	66	1	4
Magnolia and African miss., J. G. Word and Wm. Echols.....	273	105	50	25	8
Falcon et., J. H. Warfield.....	484	124	29	8	5
Lewisville and African miss., L. S. Mar- shall.....	110	34	38	.....	1
Wachita Male College, Samuel Morris, agent.					
Pine Bluff District, J. H. Blakely, P. E.					
Pine Bluff sta., J. M. Bradley.....	76	14	18	.....	3
Jefferson et., L. Garrett.....	49	13	21	.....	.....
White Sulphur Springs et., C. M. Gentry.....	273	100	22	20	9
Lehi and African miss., R. M. Kirby.....	197	83	25	7	4

	White Members	White Probationers	Colored Members	Colored Probationers	Local Preachers
Richland and African miss., A. Turrentine	5	—	48	—	—
Auburn et., F. F. Bond	29	—	85	17	—
Red Fork et., supplied	81	49	—	—	2
Red Fork African miss., John Dixon	—	—	61	47	—
Napoleon et., E. L. Gaddie	18	8	10	—	—
Salem et., R. C. Atchley*	—	—	—	—	—
Monticello District, A. B. Winfield, P. E.					
Monticello sta., W. C. Haislip	78	12	30	12	—
Mt. Pleasant and African miss., W. R. Davis	300	50	30	—	6
Lacey et., W. C. Adams	232	49	18	30	8
Hamburg et., J. F. Carr	131	31	57	—	2
Bartholomew et., A. H. Kennedy	137	38	58	43	2
Maeon Hills et., J. Y. Brice	57	31	—	25	—
Lake Village and African miss., W. J. Davis	40	20	—	—	1
Eunice et., J. M. See*	—	—	—	—	—
Warren et., P. C. Harris, J. A. Clower	307	229	75	24	6
Hampton and African miss., J. R. Harvey Hamburg Seminary, B. Watson, president.	123	49	15	—	2
Des Arc District, J. B. Annis, P. E.					
Des Arc, H. D. McKinnon	62	37	26	—	3
Brownsville miss., J. Y. Corbitt	73	37	15	15	4
Oakland Grove et., B. G. Johnson	299	67	31	—	1
St. Charles et., W. J. Scott	102	110	14	2	2
DeWitt et., W. O. Lanier	50	33	7	—	3
Old River and Swan Lake, L. H. Johnson	16	—	100	—	—
Plum Bayou et., E. Crowson	151	—	40	—	3

*New work formed or name changed and statistics not given.

"In the early and formative period of the church, the preachers were able to give but little attention to missionary and educational interests. The struggle for existence was so great that it required the full measure of their strength to supply and support the work at home. The conferences were now, however, beginning to lay their plans for greater developments in every department of church work. There was an increased liberality in missionary contributions, and plans were being devised and measures taken for the establishment of schools and colleges of such grade as to meet the demands of the rapidly growing population of the State. At this conference (1860) Rev. Samuel Morris was appointed agent to solicit funds for the building of a male college."—Jewell's History of Methodism in Arkansas, page 165.

As will be seen from Rev. Samuel Morris' appointment in the Camden district, this college was to be known as the Wachita Male College. The place was never selected, but the agent was making encouraging progress soliciting funds when the Civil War came on and put an end to the enterprise. Several schools of high grade were privately enterprised by Methodist people.

These were sometimes recognized and patronized by the conference in the appointment of presidents and professors, and became known as Methodist schools.

Jewell, in his History of Methodism in Arkansas, says the Tulip Female Seminary was organized in 1856; but in the list of appointments for the Pine Bluff district in 1855 we find "Benjamin Watson, principal of Tulip Female Seminary." Whether the school already existed, or Watson was appointed to organize it, this is the first mention of the school or its principal in the minutes of the Wachita Conference. Rev. Benjamin Watson transferred to the Arkansas Conference in 1850, and engaged in school work until he came to the Wachita Conference. In 1856 another man, Rev. J. S. McAlister, came from the Arkansas Conference and was professor of languages in the Tulip Seminary. In '57, '58 and '59 Watson and McAlister were regularly appointed to the Tulip school, but in 1860 Watson and McAlister received other appointments, and the Tulip school is not mentioned. In '61 and '62 it is to be supplied. After that there is no mention of the Tulip school. "There were two good schools conducted at Tulip before the war which drew patronage from every point around for quite a distance. The faculty of the school for boys and young men was as follows: W. D. Leiper, principal, and William Foster, assistant. The faculty of the school for girls and young ladies was as follows: Rev. Ben Watson, in department of English branches; Rev. Jesse S. McAlister, department of languages, and Rev. E. R. Barcus, department of music."—Rev. Robert C. Atchley in private letter.

There were other schools enterpriseed by the Methodists. In 1856 W. P. Ratcliff was appointed agent of the Camden Female College. In 1860, 1861 and 1862 Rev. J. E. Cobb was president or agent of Arkadelphia Female College. In 1860 and 1861 Rev. B. Watson was appointed to Hamburg Female College. In 1862, 1863, 1864 and 1865 Rev. T. W. Hayes was appointed to Center Point Male and Female Academy. His was the only one of our schools that persisted through the war. All these schools were private enterprises run by Methodists and endorsed by the conference. They were schools of high grade, where many men and women of that day received good schooling; but none of them rose to the dignity of a college.

A band of preachers never left a conference in higher spirits than did these at the close of the session of 1860. But it was only a few weeks until the result of the presidential election was known. The people of Arkansas were surprised and excited. Feeling ran high, confusion reigned, and preparation for war went on. Of course, congregations were depleted by enlistments in the army. Many of the traveling preachers entered as privates and others as chaplains.

1861-2.

The conference met October 23-29, 1861, in Camden. Bishop Paine presided, and Rev. J. S. McAlister was secretary. In spite of the hindrances and depletions of war, there was a net increase of 788 white members. The financial showing was not so good. There had been collected for conference claimants and salary deficiencies \$408.00; for missions, \$2,331.00; for Sunday schools, \$222.00. Four men were admitted on trial—John G. Ratcliff, Moses Hill, Edmond R. Harrison, Christopher C. McCrary. Three were readmitted—Cyrus P. Swinney, Marshall H. Wells and Francis M. Rhodes. Three were received by transfer—Thomas W. Hayes, John P. Holmes and John P. Stanfield. One preacher located—Elijah Smoot. Three took the supernumerary relation—J. C. L. Aikin, W. R. Davis and Robert L. Jones. Three were superannuated—Calvin M. Gentry, J. M. Stevenson and John Harris. Sixteen were in the army—J. J. Partin, W. C. Adams, T. S. Tyson, W. A. Chamberlain, T. B. Atterbury, Buckner Abernathy, J. W. Turnley, W. J. Davis, F. F. Bond, J. M. Bradley, W. C. Haislip, W. R. Davis, J. F. Carr, J. R. Harvey, W. P. Ratcliff and A. R. Winfield. The two latter were chaplains—Ratcliff in the ninth Arkansas regiment and Winfield in the twelfth Arkansas regiment. Seven transferred from us—P. C. Harris, M. H. Wells, E. A. Stevenson, W. R. J. Husbands, J. P. Stanfield, D. J. Allen and J. L. Samplly. The following appointments were made at this session:

	White Members	White Probationers	Colored Members	Colored Probationers	Local Preachers
Little Rock District, Fountain Brown, P. E.					
Little Rock sta. and African miss., D. L.					
G. McKenzie	185	16	180	....	....
Liberty and Mound chapel, M. C. Manley	36	10	45	....	....
Bayou Meto et., supplied	144	121	3	2	8
Mill Creek et., E. Crowson	90	....	57	14	....
Benton et., O. Burnett	367	65	11	5	7
Saline et., J. W. Brandon	155	....	12	....	2
Perryville et., J. L. Emerson	271	30	....	....	3
Arkadelphia District, A. Hunter, P. E.					
Arkadelphia sta. and president Arkadelphia Female College, J. E. Cobb.....	128	30	37	12	3
Clark et., Wm. Winburn	229	54	79	4	5
Tulip and African miss., J. E. Caldwell...	365	32	167	4	7
Princeton and African miss., J. S. McAlister	389	48	56	18	4
Rockport et., C. C. McCrary.....	143	24	14	7	2
Hot Springs et., J. M. See.....	74	10	7	....	1
Caddo Mission, E. N. Watson.....	308	50	....	....	....
Murfreesboro et., J. P. Holmes.....	138	22	11	5	2
Wachita Female College, supplied.....	....	....	....	....	....
Washington District, John Pryor, P. E.					
Washington and African miss., J. A. Stanley	58	11	53	14	2
Hempstead et., J. G. Word.....	327	154	....	....	3
Hempstead African miss., supplied.....	....	....	80	....	....
Center Point et., Moses Hill.....	380	....	....	....	9
Center Point African miss., supplied.....	....	....	110	19	....
Mine Creek et., A. Avery.....	57	11	10	10	1
Richmond et., T. W. Hayes.....	66	18	....	....	....
Dallas miss., supplied	70	34	....	....	4
Polk et., supplied	142	24	....	....	3
Red River and African miss., supplied.....	161	23	16	17	3
Camden District, Wm. Moores, P. E.					
Camden and African miss., H. Jewell.....	156	30	40	20	3
Wachita et., Lewis Marshall.....	416	161	....	....	2
Wachita African miss. and agent Wachita Male College, Samuel Morris.....	....	....	116	31	....
El Dorado sta., supplied.....	40	8	30	20	2
El Dorado et. and African miss., J. P. Hulse	192	36	98	15	2
Lapeal et., C. P. Swinney.....	219	14	65	2	3
Magnolia et., T. A. Graham.....	452	86	79	23	10
Falcon et., B. Williams.....	483	30	37	....	5
Lewisville and African miss., supplied.....	129	18	....	11	1
Hillsboro and African miss., supplied*.....	....	....	....	....	....
Pine Bluff District, J. H. Blakely, P. E.					
Pine Bluff sta., C. O. Steele.....	100	34	....	....	4
Jefferson et., R. M. Kirby.....	65	4	32	....	1
White Sulphur Springs et., W. J. Scott.....	330	20	....	....	10
Lehi and African miss., supplied.....	150	50	17	....	3
Auburn et., Lewis Garrett.....	29	....	85	17	....

	White Members	White Probationers	Colored Members	Colored Probationers	Local Preachers
Red Fork and African miss., R. C. Atchley	39	17	69	37	1
Belle Coe African miss., John Dixon*	.....	.....	.....	.....	.....
Napoleon, J. A. Clower.....	12	4	2	16	....
Monticello District, A. B. Winfield, P. E.					
Monticello sta., C. Pope.....	110	29	43	.....	.....
Mt. Pleasant and African miss., J. Y. Bryce	250	25	65	.....	9
Lacey et., J. H. Warfield.....	227	37	.....	.....	7
Hamburg sta., J. G. Ratcliff.....	130	30	56	.....	2
Hamburg et., B. Watson, president Hamburg Female College. No report.....	.....	.....	.....	.....	.....
Bartholomew et., G. H. Warren.....	174	23	79	10	3
Macon Hills et., F. M. Rhodes.....	175	6	.....	.....	1
Lake Village and African miss., B. C. Weir	27	.....	70	16	....
Eunice et., Thomas Hunt.....	11	16	.....	6	2
Warren et., A. H. Kennedy.....	307	220	70	20	6
Hampton et., M. Turner.....	143	40	12	.....	2
Des Arc District, J. B. Annis, P. E.					
Des Arc, E. L. Gaddie.....	54	.....	.....	13	4
Brownsville et., E. R. Harrison.....	110	39	25	12	4
Hickory Plains et., B. G. Johnson*	.....	.....	.....	.....	.....
St. Charles et., J. Y. Corbitt.....	127	20	9	.....	4
DeWitt et., supplied.....	63	58	16	.....	3
Old River et., L. H. Johnson.....	11	5	91	52	....
Plum Bayou et., H. D. McKinnon.....	125	.....	30	.....	.....
Watasa African miss., supplied.....	.....	.....	.....	.....	.....

W. T. Anderson left without appointment by order of the conference.

*New work formed or name changed and statistics not given.

1862-3.

The conference met in the fall of 1862 at Tulip. The exact date is not given in the general minutes, nor in Jewell's history. Andrew Hunter was elected president, and W. P. Ratcliff secretary.

There was no financial report, except that the sum of \$620.00 was collected for conference claimants. There was no report of the number of members in the pastoral charges. John N. Doyle was admitted on trial, and C. M. Slover came in by transfer. J. M. Bradley, J. C. L. Aikin, W. C. Haislip, E. L. Gaddie and B. Watson took the supernumerary relation; John Harris, J. M. Stevenson, A. Avery, R. L. Jones, C. M. Gentry and W. P. Ratcliff took the superannuate relation, and L. S. Marshall died during the year. Horace Jewell, W. A. Chamberlain, J. R. Harvey, T. S. Tyson, W. J. Davis and L. H. Johnson were chaplains in the army, and J. Y. Bryce, W. R. Davis

and R. M. Kirby were transferred from us. The appointments made at this session were as follows:

- Little Rock District, Fountain Brown, P. E.
Little Rock sta. and African miss., D. L. G. McKenzie.
Liberty and Mound chapel, M. C. Manley.
Bayou Meto et., Edmond Harrison.
Red Bluff et., E. Crowson.
Benton et., J. W. Brandon.
Saline miss., supplied.
Perryville et., T. B. Atterbury.
- Arkadelphia District, A. Hunter, P. E.
Arkadelphia sta., J. A. Stanley.
Arkadelphia Female College, supplied; J. E. Cobb, agent.
Clark et., J. Greer.
Clark African miss., William Winburn.
Tulip et., J. S. McAlister.
Princeton et., J. E. Caldwell.
Rockport, E. N. Watson.
Caddo et., C. C. McCrary.
Murfreesboro et., J. P. Holmes.
Wachita Conference Female College, supplied.
- Washington District, John Pryor, P. E.
Washington and African miss., W. H. Wells.
Hempstead et., J. G. Word.
Moscow et., supplied.
Center Point et., R. C. Atchley.
Center Point African miss., supplied.
Paraclifta et., F. M. Rhodes.
Richmond et., M. Turner.
Polk et., supplied.
Red River and African miss., supplied.
Hempstead African miss., Lewis Garrett.
Center Point Male and Female Academy, T. W. Hayes.
Camden District, William Moores, P. E.
Camden sta. and agent for Wachita Conference Male College, A. R. Winfield.
Wachita et., C. O. Steele.
Wachita African miss., Samuel Morris.
El Dorado and African miss., J. C. L. Aikin.
Lapeal et., J. P. Hulse.
Hillsboro African miss., supplied.
Magnolia et., C. P. Swinney and T. A. Graham.
Falcon et., Burton Williams.
Lewisville and African miss., supplied.
Pine Bluff District, W. R. J. Husbands.
Pine Bluff sta., C. Pope.
Jefferson et., O. Burnett.
White Sulphur Springs et., W. J. Scott.
Lehi and African miss., E. L. Gaddie.
Auburn et., Thomas Hunt.
Red Fork and African miss., John Dixon.
Richland et., supplied.

Monticello District, A. B. Winfield, P. E.
Monticello sta., J. F. Carr.
Mt. Pleasant and African miss., J. H. Blakely.
Lacey et., J. A. Clower.
Hamburg et., J. H. Warfield.
Bartholomew et., G. H. Warren.
Lake Village et., F. F. Bond.
Eunice et., supplied.
Warren et., B. C. Weir.
Hampton and African miss., A. H. Kennedy.
Des Arc District, J. B. Annis, P. E.
Des Arc, B. G. Johnson.
Austin et., J. M. Goodwin.
St. Charles et., supplied.
DeWitt et., J. N. Doyle.
Old River et., supplied.
Plum Bayou et. and African miss., H. D. McKinnon.
Watasaka et., C. M. Slover. (Wabaseeka?)

"The conference year of 1862-3 opened with the dark clouds of war hanging heavily over the country. Nothing was heard on every side but the noise of war. The terrible slaughter of the battle fields made it necessary to make still heavier drafts upon the country to supply the places of those who had fallen in battle or died in the camp. * * * Such was the terrible condition of the country during this year that the preachers could do but little else than try to hold their scattered congregations together. In the majority of neighborhoods all the able-bodied men had been called into the army, and none were left to sustain the churches at home except a few old men, the women and the children. The churches at home were passing through a most trying ordeal, and many of them were entirely destroyed by the ravages of war. It required as high an order of patriotism and fidelity to Christ to fill the conference appointments and labor to hold the churches together as it did to enter the army as chaplains. The army chaplain had this advantage over the circuit preacher of that day: the chaplain was in the midst of the most intense excitement, and was sustained by a public opinion that surrounded his name with a kind of military glory that was very gratifying to human nature; while the circuit preacher labored in comparative obscurity, and patiently bore the privations to which he was constantly exposed."³

³Jewell's History of Methodism in Arkansas, 172.

1863-4.

The conference met in the fall of 1863 at Lewisville. The exact date is not given; and the general minutes make the mistake of saying it met in Tulip. No bishop being present, Andrew Hunter was elected president. J. E. Cobb was secretary.

James F. Hall and R. P. Davies were admitted on trial, and Richard F. Colburn was readmitted. J. M. Goodwin located; J. H. Blakely and J. M. Bradley took the supernumerary relation; J. M. Lee, J. S. McAlister, C. O. Steele, J. C. L. Aikin, John Harris and A. Avery were superannuated, and D. L. G. McKenzie and William Winburn had died during the year. There is no mention of those in the army, and the number of members in the pastoral charges is not given. The financial report shows collected for conference claimants and salary deficiencies, \$2,725.00, and for missions, \$7,000.00. This was in Confederate currency. The appointments made at this session were as follows:

Little Rock District, J. B. Annis, P. E.
Little Rock sta. and African miss., R. F. Colburn.
Bayou Meto et., O. Burnett.
Red Bluff et., supplied.
Benton et., T. S. Tyson.
Saline et., C. C. McCrary.
Perryville et., T. B. Atterbury.
Hickory Plains et., B. G. Johnson.

Arkadelphia District, W. R. J. Husbands, P. E.
Arkadelphia sta., J. E. Cobb.
Clark and African miss., J. Greer.
Tulip and African miss., A. Hunter.
Princeton and African miss., J. E. Caldwell.
Rockport, E. N. Watson.
Hot Springs et., E. R. Harrison.
Caddo et., J. W. Brandon.
Murfreesboro et., J. R. Harvey.

Washington District, John Pryor, P. E.
Washington sta., M. H. Wells.
Moscow et., F. M. Rhodes.
Hempstead et., J. G. Word.
Center Point et., R. C. Atchley.
Center Point African miss., supplied.
Paraclifta et., M. Turner.
Richmond et., James F. Hall.
Red River African miss., R. P. Davis.
Polk et., supplied.
Dallas miss., supplied.
Center Point Male and Female Academy, T. W. Hayes.
Camden District, William Moores, P. E.

Camden sta., W. P. Ratcliff.
Wachita et., B. Williams.
Wachita African miss., Samuel Morris.
El Dorado et., M. C. Manley.
Lapeal et., J. P. Hulse.
Hillsboro African miss., supplied.
Magnolia et., J. P. Holmes.
Columbia African miss., T. A. Graham.
Faleon et., W. J. Scott and W A. Chamberlain.
Lewisville et., H. D. McKinnon and J. A. Stanley.
Long Prairie African miss., J. M. Stevenson.
Pine Bluff District, Fountain Brown, P. E.
Pine Bluff sta., C. Pope.
Jefferson et., supplied.
Sulphur Springs et., E. Crowson.
Lehi et., Thomas Hunt.
Plum Bayou et., C. M. Slover.
DeWitt et., J. N. Doyle.
Monticello District, B. Watson, P. E.
Monticello and Woodlawn, A. B. Winfield.
Mt. Pleasant et. and African miss., E. L. Gaddie.
Lacey and African miss., J. A. Clower.
Hamburg et., G. H. Warren and F. F. Bond.
Bartholomew et., J. H. Warfield.
Crooked Bayou et., John Dixon.
Warren et., B. C. Weir.
Hampton et., A. H. Kennedy.

1864-5.

"The year 1864 closed with the dark clouds of despair resting upon the country. All hope of success had been abandoned by all except a few sanguine persons. Nothing but a sense of honor kept the soldiers to their places in the field. The leaders were without definite plan, simply waiting for something to transpire that might possibly avert the doom that seemed to be hanging over the country. Every available soldier had been called to the field, and none were left at home except a few old and feeble men, and boys who were too young to go into the army."⁴

The conference was appointed to meet in the fall of this year at Arkadelphia, but, for some reason, met at Columbia camp ground instead. The exact date cannot be determined. No bishop was present. W. P. Ratcliff was elected president, and J. E. Cobb secretary.

Three men were admitted on trial—Edward R. Barcus, Charles A. Williams and George W. Evans. Two located—

⁴Jewell's History of Methodism in Arkansas, 183.

Gideon H. Warren and Thomas S. Tyson. Four took the supernumerary relation—James H. Warfield, John H. Blakely, Samuel Morris and M. Turner. Six were superannuated—John Harris, A. Avery, Robert L. Jones, J. C. L. Aikin, Lewis Garrett and J. B. Annis. Three had died—J. S. McAlister, J. M. See and L. H. Johnson. The sum of \$5,495.00 in Confederate currency was collected for the conference claimants. The reports from the charges were meagre and imperfect. The following appointments were made:

	White Members	White Probationers	Colored Members	Colored Probationers	Local Preachers
Little Rock District, A. H. Kennedy, P. E.					
Little Rock sta., R. F. Colburn*	.....	.....	.....	.....	.....
Bayou Meto et., supplied*	.....	.....	.....	.....	.....
Benton et., supplied*	.....	.....	.....	.....	.....
Des Arc et., O. Burnett*	.....	.....	.....	.....	.....
Pine Bluff sta., Cadesman Pope*	.....	.....	.....	.....	.....
Jefferson et., Fountain Brown*	.....	.....	.....	.....	.....
Sulphur Springs et., E. Crowson*	.....	.....	.....	.....	.....
Lehi et., C. M. Gentry*	.....	.....	.....	.....	.....
Plum Bayou et., C. M. Slover*	.....	.....	.....	.....	.....
DeWitt et., J. N. Doyle*	.....	.....	.....	.....	.....
Arkadelphia District, W. R. J. Husbands, P. E.					
Arkadelphia sta., E. N. Watson	133	.....	.....	.....	3
Clark and African miss., J. Greer*	.....	.....	.....	.....	.....
Tulip et., A. Hunter	300	40	100	30	5
Princeton et., J. E. Caldwell	349	32	68	5	3
Rockport et., E. R. Barcus	178	64	12	23	4
Hot Springs et., supplied*	.....	.....	.....	.....	.....
Caddo et., C. C. McCrary*	.....	.....	.....	.....	.....
Murfreesboro et., Thomas Hunt*	.....	.....	.....	.....	.....
Washington District, John Pryor, P. E.					
Washington sta., J. G. Word	45	.....	50	12	.....
Mosecow et., Wm. J. Scott	159	.....	.....	.....	1
Hempstead et., R. P. Davies	195	10	13	.....	1
Center Point et., J. P. Holmes	375	67	.....	.....	9
Center Point African miss., supplied*	.....	.....	.....	.....	.....
Richmond et., J. M. Stevenson	142	.....	28	.....	2
Red River et., F. M. Rhodes	227	25	117	30	3
Rondo and African miss., R. C. Atchley*	.....	.....	.....	.....	.....
Richmond African miss., supplied*	.....	.....	.....	.....	.....
Center Point Academy, T. W. Hayes	.....	.....	.....	.....	.....
Camden District, Wm. Moores, P. E.					
Camden sta., W. P. Ratcliff	127	35	56	13	1
Wachita et., B. Williams*	.....	.....	.....	.....	.....
Buena Vista et., James F. Hall*	.....	.....	.....	.....	.....
El Dorado et., M. C. Manley	308	20	90	10	5
Lapeal et., C. A. Williams*	.....	.....	.....	.....	.....
Hillsboro African miss., supplied*	.....	.....	.....	.....	.....

	White Members	White Probationers	Colored Members	Colored Probationers	Local Preachers
Magnolia et., C. O. Steele.....	504	97	62	25	10
Falcon and African miss., T. A. Graham and J. W. Brandon.....	408	73	85	36	4
Lewisville et., J. P. Hulse.....	142	18	20	....	...
Walnut Hills et., J. A. Stanley*.....	....	....	....	....	...
Long Prairie African miss., supplied.....	....	....	10	8	...
African miss., Samuel Morris*.....	....	....	....	....	...
Monticello District, B. Watson, P. E.					
Monticello and Woodlawn, A. B. Winfield	100	3	50	....	1
Mt. Pleasant and African miss., J. H. Blakely* .....	....	....	....	....	...
Lacey and African miss.....	253	135	69	13	...
Hamburg et., J. A. Clover*.....	....	....	....	....	...
Holly Grove et., John Dixon*.....	....	....	....	....	...
Bartholomew et., supplied	224	60	71	....	1
Warren et., E. L. Gaddie.....	387	84	73	2	6
Hampton et., B. C. Weir.....	146	27	15	70	1

Agent Trans-Mississippi Army Tract Society, J. E. Cobb.

Missionary in Clark's Missouri brigade, H. D. McKinnon.

Chaplains in C. S. army: A. R. Winfield, Horace Jewell, E. R. Harrison, W. A. Chamberlain, M. H. Wells, J. R. Harvey, B. G. Johnson, W. J. Davis and George W. Evans.

*No report. In the general minutes for 1864 there is no report of the Little Rock or Pine Bluff District. Quite a number of charges in the other districts made no report. It will be noticed that in the appointments for this year the Pine Bluff District is absorbed, and there are only five districts.

1865-6.

Speaking of the effects of the war on the church, Jewell says: "The church had suffered in common with the country in the loss of men and property. Not only had all improvements and aggressive movements been suspended, but there had been a great destruction of church property, and in its impoverished condition the church was not able to supply the loss."

The Wachita Conference met in the fall at El Dorado. Andrew Hunter was elected president, and J. E. Cobb secretary. Six men were admitted on trial—Samuel G. Colburn, John H. Riggin, Benjamin O. Davis, James Stincil, George E. Baxter and William C. Adams. One was received by transfer—George W. Primrose. Robert C. Atchley located; Malcom Turner, B. C. Weir, T. A. Graham and J. C. L. Aikin took the supernumerary relation; John Harris, A. Avery, R. L. Jones and J. B. Annis took the superannuate relation. The general minutes do not

give any report of finances or of church membership. In 1860 there were 81 preachers in the conference; in 1865 there were only 60. The depletion in the church membership had reached even a greater per cent, for every charge had suffered heavily, and many churches were entirely destroyed. The following appointments were made at this session:

- Little Rock District, A. Hunter, P. E.
Little Rock and colored charge, W. P. Ratcliff and J. E. Cobb.
Benton, E. N. Watson.
Saline et., supplied.
Perryville et., J. W. Brandon.
Bayou Meto et., H. D. McKinnon.
Austin et., C. M. Slover.
Des Arc et., B. G. Johnson.
Pine Bluff District, W. R. J. Husbands, P. E.
Pine Bluff sta., C. Pope.
Auburn et., F. Brown and E. L. Gaddie.
Sulphur Springs et., C. M. Gentry.
Lehi et., supplied.
Warren et., George W. Primrose.
Plum Bayou et., E. Crowson.
DeWitt et., J. N. Doyle and T. B. Atterbury.
Arkadelphia District, A. H. Kennedy, P. E.
Arkadelphia sta., J. E. Caldwell.
Clark et., Lewis Garrett.
Tulip et., R. F. Colburn.
Princeton et., E. R. Bareus.
Rockport et., W. C. Adams.
Murfreesboro et., supplied.
Caddo et., B. O. Davis.
Washington District, A. B. Winfield, P. E.
Washington sta., J. A. Stanley and G. E. Butler.
Hempstead et., J. Greer.
Moscow et., W. J. Scott.
Center Point et., J. G. Word.
Paraciflita et., supplied.
Richmond et., J. P. Holmes.
Richmond colored charge, supplied.
Polk et., supplied.
Center Point Academy, T. W. Hayes.
Red River District, William Moores, P. E.
Lewisville et., J. F. Hall.
Falcon et., J. P. Hulse.
Rondo et., G. W. Evans.
Olive Branch et., F. M. Rhodes.
Long Prairie miss., J. M. Stevenson.
Lost Prairie et., R. P. Davis.
Camden District, John Pryor, P. E.
Camden sta., A. R. Winfield.
Wachita et., H. Jewell and S. G. Colburn.
Buena Vista et., Samuel Morris.

Hampton et., E. R. Harrison.
El Dorado et., Burton Williams.
Lapeal et., M. C. Manley.
Hillsboro miss., supplied.
Magnolia et., C. O. Steele.
Monticello District, M. H. Wells, P. E.
Monticello sta., J. H. Riggan.
Mt. Pleasant et., J. H. Blakely.
Hamburg et., J. A. Clower.
Bartholomew et., J. A. Stineil.
Lacey et., F. F. Bond and Thomas Hunt.
Ashley colored charge, C. A. Williamson.
Holly Grove et., supplied.
Eunice colored charge, John Dixon.
Lake Village et., W. A. Chamberlain.
Agent for Sunday schools, B. Watson.

W. P. Ratcliff, Andrew Hunter, A. R. Winfield and J. E. Cobb were elected delegates to the General Conference, which met the following May in New Orleans. That General Conference changed the name of the Wachita Conference to the Little Rock Conference. The further history of this conference is to be found under that head.

In the period covered by this article, 1854 to 1866, Arkansas was a thinly settled country, and had no railroads. Life was simple. Worship was simple. There were but few hymn books. The organ was not allowed in the church. As late as 1867 the Little Rock Conference passed resolutions expressing disapproval "of the use of choirs and instruments of music in our churches, believing that they tend to formality in worship, and the destruction of congregational singing." The church buildings were plain or rude structures, lighted with tallow candles, and usually without means of warming in winter. Little attention was given to Sunday school work. There were no missionary or other organizations in the church. Preaching, singing, prayer and testimony were stressed. The *Memphis and Arkansas Christian Advocate*, published at Memphis, was circulated sparsely over this conference. It was the day of the camp meeting, and many noted camp grounds were to be found over the country: Benton, in Saline County; Glazier Pool, in Garland; Rock Springs, in Dallas; Columbia, in Columbia; Brown Springs, in Clark; Sardis, in Grant; Mt. Pleasant, in Drew; Keener, in Ashley; Little Prairie, in Arkansas; Center Point, in Howard, and many others. The annual meeting and revival at these

places was the great event for a great territory around. Many people who lived out of reach of a church attended these great meetings. The whole population came together and camped around the great shed, beside a fine spring. Amply provided with food, they gave themselves wholly to religious exercises for days. The social and educational value of these gatherings was worth much, and the religious value was immeasurable.

SOURCES OF INFORMATION.—General minutes, M. E. Church, South; History of Methodism in Arkansas, by Jewell, and private letters.

A HISTORY OF THE OLD STATE HOUSE.

BY MYRA MCALMONT VAUGHAN.¹

When the lands embraced within the limits of the present State of Arkansas became the Territory of Arkansas in 1819, there was but one spot that could be selected for the seat of government, and that was the ancient Post of Arkansas, which was the only place that could be called a town. During the years that this place was so occupied it was known as the village of Arkansas.

The plan to move the seat of government to the present site of Little Rock was broached almost as soon as the Territory was formed, and there were many good reasons to recommend this change. By treaties with the Osages and Quapaws, the Indian title to all the lands north of the Arkansas River had been extinguished, and by further treaty with the Quapaws all the eastern part of Arkansas, south of the river by the same name, beginning at the Point of Rocks, had become the property of the United States. But the citizens west of that line, in order to reach the capital, had either to pass through Indian territory or go by a very circuitous route, and the capital being situated so far to the east, caused many complaints.

Through the proposed site of the new capital led an old Indian trail, and at that point was the favorite crossing place of the Indians. The road that was being built from St. Louis, via New Madrid, would lead directly through this site, on its completion to the United States posts south of Arkansas. All the boats that then reached the Post of Arkansas could ascend the river to the new site; in fact, up to this time the rations for the United States troops at Fort Smith or Cantonment Gibson had no other means of transportation than by canoes, flat boats, rafts or keel boats. A comparison of the natural and prospective advantages of the proposed site, not forgetting the

¹For a sketch of Mrs. Vaughan, see page 260 of volume I of Publications of the Arkansas Historical Association.—EDITOR.

gentle, sloping bluffs of the new site, with the far-away and yearly flooded situation at the post showed much in favor of the proposed position. To the advantages already mentioned must be added the greedy interest of Missouri land speculators, for those days were as prolific in real estate dealers as our own times. The records of the United States land office show that as early as 1812 William Russell of St. Louis, either himself, or by his agents, had searched the lands of Missouri, then containing the future Territory of Arkansas, buying even the scantiest claim to a settlement. These old claims, especially those of the early French hunters and fishers, were bought up for a few dollars. These old French, and later Spanish and American claims where there were no actual grants from the French or Spanish authorities, had been liberally protected by the United States by what was called preëmption rights, which gave the first settlers, or even the "squatters," as they were called, first choice when these lands should be surveyed and sold by the government, no matter how flimsy the cabin, nor small the clearing.

Every man who had spent a few months on the present site of Little Rock bartered and sold these unsurveyed claims, and, eventually, William Russell came into possession of all these claims. After the New Madrid earthquake the United States issued what were called New Madrid grants for a quantity of land equal to that destroyed, to be "laid," as it was called, on unoccupied, unimproved land. Several of these claims were "laid" upon the site of Little Rock. Some of these were acquired by Chester Ashley. Russell, becoming afraid that Ashley would make trouble, proposed a partnership, by which Ashley received half interest in the preëmption claims, and the New Madrid claimants gave Russell about the same quantity of their claims, Ashley and his friends promising not to fight preëmption claims.

Amos Wheeler, who had become owner of one of the preëmptions, for William Russell and the other claimants, had offered to the general assembly of the Territory of Arkansas a site for a capital and also a building for their meeting. The offer was accepted, with a guarantee of \$20,000.00 from Wheeler and the other claimants, and in 1821 the seat of government was

removed from Arkansas Post to Little Rock, and about the same time the county seat of Pulaski County was moved to the same place.

The land claimants in the meantime had patched up a peace, and in November, 1821, Henry Conway, William Trimble, Robert Crittenden, Oden and Thomas P. Eskridge, having received half interest in the claims, the sale of lots became brisk, and when the time for the meeting of the general assembly arrived the promised building was completed. It consisted of a log cabin of two rooms, and was situated between Fourth and Fifth and Main and Scott streets, not very far from the present site of the Presbyterian Church on Fifth street. In this house the meeting of the general assembly for 1821 was held, and this building continued for many years the meeting place for that body, though the *Gazette* in mentioning the meeting place simply states that it was held, with no further information as to when. But in 1828 the editor states definitely that the general assembly met in the "state house." In 1829 he says it was in "the capitol," and in 1831 at "the state house." By this time the building had become so dilapidated that the rain leaked in on the head of the judge as he was administering the oath of office to the members, and this session of 1831 was the last one held in the old building, for the *Gazette* says that the general assembly of 1833 "hired two rooms of Colonel Caldwell's long row of frame building," on account of the dilapidation of the building formerly used by them. The meeting of 1835 was divided, the legislative council occupying the Baptist Church, and the house the Presbyterian Church, says the *Gazette*. The "Baptist meeting house" was situated on the block between Third and Fourth and Main and Scott streets, and the Presbyterian Church on the block north, that is, between Second and Third and Main and Scott streets. The constitutional convention began January 4, 1836, and was held in the "Baptist meeting house," which was the first church built in Little Rock.

The general assembly of 1836 was held in the unfinished state house, consisting of the central part of the building, the wings not having been commenced at this time. Every session of the legislature, as it is now called, from 1836 to 1910 has been held in that building, with the exception of that of 1863,

held in Washington, Hempstead County, while that place was the temporary seat of government. The legislature of 1911 met for the first time in the new state house.

But it seems in this connection fitting to give an account of the erection of the old state house, and so I add the following particulars.

By act of March 2, 1831, congress decreed:

"That the legislature of the Territory of Arkansas be, and they are hereby, authorized to select, or cause to be selected, a quantity of the unappropriated lands in the Territory of Arkansas not exceeding ten sections, and in portions not less than one-quarter section, which is hereby granted to said Territory for the purpose of raising a fund for the erection of a public building at Little Rock, the seat of government of said Territory.

"And be it further enacted that the legislature of said Territory be, and they are hereby, authorized to adopt such measures for the sale of said tract of land, or any part thereof, at such times and manner and convey the same by such deeds as they shall deem expedient, and upon the presentation of such deeds of conveyance as shall be adopted by said legislature, and given the purchasers, for the commissioner of the general land office, it shall be the duty of the president to issue patents to the purchasers as in other cases."

As the time approached for the meeting of the legislature of 1831, Secretary Fulton suggested to Mr. Crittenden that he offer his home in exchange for the land so lately donated by congress. This house, formerly known as the Johnson house, more lately as the Eagle home, is still standing in Little Rock, though built in 1827, and was in 1831 the most pretentious house in the Territory, though not then consisting of the many rooms it later contained, several of which were torn down some years ago. The construction of this house was said to have straitened Crittenden financially, and after some parleying he assented to Fulton's proposition, and soon after the meeting of the legislature a bill was offered to that effect, was bitterly assailed in some quarters, but finally passed. Governor Pope was violently opposed to the measure, and when the bill was presented to him he promptly vetoed it. Growing out of this veto, a petition was sent by the legislature to congress, praying for permission to elect their own governor, declaring the present mode of appointment worked a great hardship on the citizens of the Territory. Counter-petitions by private citizens all over the Territory were sent to congress, endorsing the governor in his course, and congress replied by taking all power over the

gift of land away from the legislature, and turning it over to the governor.

Of course, this action of congress only increased the personal question in the disposition of the land, and was the cause of much bitter controversy all through Governor Pope's administration, and even continued after he had left the Territory, until he felt called upon to demand of the government an examination of his acts and accounts connected with the disposition of the land and the funds received for it, which completely exonerated him.

Naturally, this controversy led to delay, and it was not until October 30, 1832, that the ten sections of land were advertised for sale for February 22, 1833, at public auction, unless sold before that time at private sale. The terms demanded were \$15,000.00 for five sections, and not less than five dollars per acre for the remaining five sections. The public sale did not take place, for by January, 1833, nearly all the grant had been disposed of by private sale, bringing \$24,504.00, to which must be added about \$400.00 given by Chester Ashley, Joseph Henderson, R. C. Byrd, William E. Woodruff and A. H. Sevier.

In January, 1833, Governor Pope purchased the present site for the new state house for the future State of Arkansas. The first deed was a gift of one lot and a half by David G. Eller. William Russell sold five lots for \$800.00 and deeded, as a gift, three lots, and Ashley deeded, as a gift, two lots and a half, constituting the twelve lots now occupied by the old state house.

Governor Pope asked Mr. Shyrock, an architect who had planned the capitol of Kentucky, to make a plan for and superintend the work of the proposed building. He made the plan, but was unable to supervise the work, and he recommended Mr. George Weigart for the work, who accepted the commission and continued the work until his death in 1834.

The plan was found too expensive and had to be cut down to meet the financial requirements. The work on the building was begun in March, 1833, but it was several years before it was completed.

In the meantime, June 15, 1832, a thousand-acre tract "contiguous" to Little Rock had been granted by congress to raise funds to build a court house and jail in Little Rock, and later,

in 1836, five sections more of land had been granted by congress to complete the state house. The proceeds of this land with subscriptions from citizens and the grant by the State, in 1840, of \$37,000.00, completed the building in 1840.

The proceeds of the sale of the ten sections brought.....	\$ 31,722.00
The proceeds of the sale of the five sections brought.....	38,000.00
The proceeds of the sale of 1,000-acre tract brought.....	16,657.00
The legislature appropriated	37,000.00
Total	\$123,379.00
The alterations and repairs authorized in 1885.....	35,000.00
 Total	 \$158,379.00

The proceeds of the sale of the 1,000-acre tract built the wings and also, it was said, the jail, but the money was expended in such a way that the accounts were not kept separate and could not be given accurately.

After the centennial celebration in Philadelphia the coat of arms of the State used on the Arkansas building was placed on the front of the state house, and the fountain bought by the Ladies' Centennial Club of Arkansas for the grounds at the centennial was also presented to the State, where it has been a source of pleasure ever since.

Many years ago the United States and county courts had to seek other quarters, as more room was necessary in the old building for the State's interests alone. In the course of time the needs of the people outgrew the old building and a new one became a necessity. But around the site of the old state house has been waged many a legal battle in regard to the title to the property. As mentioned before, William Russell had become possessed of all the preëmption claims "laid" on the site of Little Rock, and Chester Ashley was interested in these same claims, but later he invested in New Madrid claims, and these two joined hands in the two sets of claims, thinking that one or the other would certainly get the land. But the United States land office eventually declared against both, claiming that the land was Indian property at the time the claims had been laid.

Then Rosewell Beebe came in, and, getting possession of what was called "floats," located them on the present site of Little Rock, although it had always been declared by the land

office that such "floats" issued to persons in place of land that had been granted by mistake, or some other cause, by which the claimants became dispossessed of granted land, could not be "laid" on occupied or improved land. In 1838 Beebe procured these "floats," and in 1839 the warrants were granted by the land office, and practically the town of Little Rock became his property. Mr. Beebe had made a promise, by record, to make good the title of all land sold previously, and, of course, this included the state house property. This promise was carried out by deed of Rosewell Beebe and wife to the State of the said property, and it is by this deed that the old state house is held as the property of the State in perpetuity, as was decided in the suit instituted by Beebe's heirs some years ago for the site of the old jail property. William Russell, Philbrook's heirs and many others have tried to have this deed set aside, but all efforts have proved fruitless.

To the lay mind it seems a piece of sharp practice on the part of Rosewell Beebe and a stultification of the land office which placed this property in the hands of Beebe, but "all's well that ends well."

SEMINARY LAND GRANT.

BY J. H. REYNOLDS.

No other government in the world has been possessed of so large a public domain as the United States. Nor has any other government, in the disposition of its public lands, been so generous in its favors to education. We are accustomed to think that the general government, in its encouragement of education, thought of elementary schools only. Such was not the case. Contemporary with its donation of the sixteenth section for common schools came its land grants for universities. In the minds of our revolutionary fathers higher education was as worthy an object of federal bounty as elementary education. This fact is emphasized by some of the early ordinances. May 20, 1785, congress passed an "ordinance for ascertaining the mode of disposition of lands in the western country," in which it set apart the sixteenth section of every township for the maintenance of the public schools within said township. This is the beginning of that magnificent system of the federal land grants for education. Two years later it was enlarged and took the form of a great national policy, which has been consistently carried out ever since. The famous ordinance of July 13, 1787, stated this policy as follows: "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." This declaration was a pledge of faith that the general government would foster education. Subsequent history shows that the pledge has been faithfully kept. It is the glory of our country that she had in her infancy a broad statesmanship big enough to lay broad and deep the foundation of the young republic in the intelligence and character of the people. Ten days after the immortal ordinance was passed, its companion, a bill entitled "Powers to the board of treasury to contract for the sale of western lands," carried out the declaration of the principle contained in the ordinance. It reserved the sixteenth

section in each township for common schools, and, moreover, set apart two townships to be used exclusively for the support of a university, the lands to be located near the center of the Territory and the trust to be administered under the direction of the legislature. The last reservation for a university was the first of its kind in the history of the country—perhaps of any country—and began a new policy.

The year 1787 is also marked by a large land sale in Ohio. Congress provided for the sale to the Ohio Company, a New England concern, of 2,000,000 acres in southeastern Ohio, and in the transaction reserved the sixteenth section in each township for schools, two townships of good land for a university, and the twenty-ninth section of each township for religion. About the same time a patent to 248,000 acres in southwestern Ohio was granted to John Cleves Symmes and associates. The same provision respecting schools, religion and a university appeared in this grant, save that only one township was reserved for the latter purpose. The companies failing to comply with the terms of the contracts, the cessions lapsed. This was the situation when Ohio in 1803 came into the Union. Congress applied to Ohio the principles set forth above, and in admitting her as a state reserved for schools every sixteenth section and three townships for universities, one in each of the two purchases. It vested these donations in the legislature to be applied solely for the purposes named. This legislation, while specific and not pledging the government for the future, settled the main points in our national educational policy. Of the twenty-seven land-grant states, nineteen received two townships for university purposes, four (Alabama, Florida, Wisconsin and Minnesota) received four townships, Mississippi and Ohio three, Tennessee 100,000 acres and Utah 200,000. Such grants were not made to the original thirteen states, nor the other states in which the public lands were not owned by the United States. The states which have not received seminary land grants are Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Texas, Kentucky and West Virginia.

THE GRANT TO ARKANSAS.

Arkansas has been a beneficiary of this land-grant policy. On February 17, 1818, in providing for the establishment of additional land offices in the Territory of Missouri (Arkansas then being a part of said territory), Congress directed that one township of land on the waters of the Arkansas River within the Territory be reserved for the use of a seminary of learning therein. This provision doubtless looked toward the ultimate organization of Arkansas as a separate territory, and was the first step in the direction of founding a university therein. Provision was thus made for the higher education of the people before separate territorial existence was realized. Nothing further was done in the matter until March 2, 1827. On that date congress passed an act reserving from sale two entire townships of the public lands in Arkansas, to which the Indian title had been extinguished or might be extinguished later, "for the use and support of a university within said territory, and for no other use or purpose whatsoever." The land was to be located in tracts of not less than one section. One of the townships set apart by this act was to be in lieu of the township described above as having been granted for the same purpose in 1818.

ADMINISTRATION OF THE GRANT.

Soon after the passage of this law Governor Izard, under the direction of the secretary of the treasury, appointed an agent to select and locate the seventy-two sections of the university. Governor Izard, however, died before the work was completed. His successor took up the work where he left off and carried it to completion. In his message to the legislature in 1831 Governor Pope said that he had finished the selections, expressed the opinion that the lands chosen were good, reminded that body that the agents making the selections had not been paid, that his efforts to secure their payment had been in vain, and he therefore advised that the general assembly provide for their payment.

LANDS UNDER CONTROL OF LEGISLATURE.—The history of the sale of these seminary lands and of the administration of the funds does not reflect much credit upon Arkansas. Its

story, however, is a part of the educational history of the State and must be briefly told here. During the territorial days the governor seems to have largely controlled the lands, but after statehood the legislature was responsible for the sale of the land and the administration of the funds. By an act of congress March 3, 1833, the governor of Arkansas was authorized to sell twenty sections and to apply the proceeds to the erection of buildings for the proposed university. Nothing appears to have been done under this act. October 24, 1835, congress was memorialized by the general assembly to confer upon the latter body complete control over the seminary lands. For some time the legislature had been out of humor with Governor Pope for the manner in which he was disposing of the capitol lands and building the territorial capitol. The members of the general assembly had taken the position that the control of such matters should be left in their hands. They probably entertained the same view regarding the management of the university fund. Congress, in admitting Arkansas into the Union, granted the request of the general assembly by providing in the fifth section of the compact of June 23, 1836, later accepted by Arkansas, that the two townships granted for seminary purposes should be vested in the general assembly to be applied solely for the purposes of the donation. The capitol situation was reversed in the management of the university lands and funds. Congress had given Governor Pope a free hand in controlling the building of the capitol, and the legislature was powerless; now the legislature was supreme in the control of university affairs, and the governor was compelled to content himself with making recommendations.

The sequel of the two experiments shows that the capitol management by the governor was much wiser than the control of the university funds by the general assembly. However, the governors exercised their prerogative and made recommendations in the premises. Governor James S. Conway, our first governor under statehood, in his message to the special session of 1837, reminded that body that Arkansas had no public institution of learning, and argued that plans for a university be formed at once, and that its construction be entered upon and pushed to completion. He insisted that the State had the means.

The general assembly decided to give the governor an opportunity of doing at least something for the university. By an act of December 17, 1838, the governor was made the agent of the State to sell what remained unsold of the seventy-two sections of seminary lands. He could sell in lots of not less than one-half quarter section. Thirty days' notice of sale must be given and no land could be disposed of at less than \$10.00 per acre. The governor, in making sales, was authorized to receive one-fourth cash, one-fourth payable one year after sale, one-fourth two years, and one-fourth three years thereafter. Purchasers were required to give notes with two good and sufficient sureties, interest at 10 per cent. The governor was required to deposit all seminary funds with the bank of the State of Arkansas or its branches, to the credit of the university fund. The law was careful to provide that this fund should not be liable for the debts of the bank, and that all profits accruing thereon should be placed to the credit of the fund, which should remain intact until appropriated for the establishment of a university.

FATAL POLICY ADOPTED.—According to the provisions of this act, Governor Conway offered for sale February 17 and 18, 1840, all the seminary lands at public auction. Only four eighty-acre tracts were sold, the purchase price being \$3,312.00. The governor seems to have been discouraged by this experience. He therefore, in his message of November 3, 1840, recommended that the minimum price be reduced to \$5.00 per acre, and that where not sold at public auction the governor be authorized to sell at private sale. Among other things, the governor said: "No state in the Union feels more sensibly than Arkansas the want of a seminary of learning. The general government, with a desire to diffuse knowledge and learning, has placed sufficient lands at our disposal to establish a seminary of learning of the first class." He concluded by saying that the responsibility of applying these land grants, including the sixteenth section, to the objects of their donation rests upon the general assembly. But the governor, notwithstanding his good intentions, had suggested the very thing that ultimately defeated the object of the grant, namely, the reduction of the price of the lands. The law of 1838, fixing the minimum price

at \$10.00 per acre, if carried out, would have realized only \$460,800.00 in all, not allowing for any loss. While such a price would have delayed the sale of some of the lands, yet, as they were judiciously selected, they were good lands, and with the rise in values which always accompanies an increase in population, they could have been sold for that amount. Besides, reducing the price of such public lands was an old game of the land speculators. If by applying to the legislature they could secure a reduction in the minimum price, they, of course, would not pay a higher price. Arkansas legislators, like those of many other states, played into their hands and the potential endowment of a great university was sacrificed.

But the governor had recommended the reduction in price, and the legislators were only too glad to pass a law that would add to their popularity with their constituents. Hence, on the 28th of December, 1840, the governor approved a bill, practically a duplicate of the act of December 17, 1838, heretofore analyzed. The material changes were that the minimum price at the first public sale and at all private sales for six months thereafter was fixed at \$6.00, for the next six months \$5.00, then for six months more \$4.00, and after eighteen months at \$3.00 per acre, "until otherwise altered by law." The time for payments was extended to five annual installments. Thus, not only was the price reduced so low as to defeat the object of the grant, but, moreover, by the clause "until otherwise altered by law," the people were actually invited to call for further reductions. The passage of this act destroyed all well-founded hope for a genuine university. However, Governor Archibald Yell two years later did not seem to realize this fact, for in his message of that year he told the general assembly that that body had at its command, in the form of federal land grants, ample means for the establishment of colleges and universities as well as a system of common schools. He therefore became eloquent in his appeal for action: "Then let me appeal to you, by the debt you owe your country, by the just claims of morality, religion and of freedom, let not the light of knowledge be extinguished in your hands, but, on the contrary, build to it honorable temples and imperishable altars, that it may be made to descend like the unclouded sun, bright and glorious, to your

posterity.' The trouble with the loquacious governor was that he was not a college-bred man, and had but little conception of what was required for the establishment and maintenance of a first-class university. His talk was mere rhetoric.

Another blow was dealt the proposed university by the legislature of 1842 passing a resolution reciting that, whereas private parties had ignorantly entered upon, occupied and improved some of the university lands, said parties were called upon to report the facts to the governor, who in turn was directed to deed the lands to them and to have other government lands selected in their stead. Such legislation was a wanton sacrifice of the State's interests, put a premium on perjury and encouraged a reckless disregard of whatever rights the State and benevolent causes might have in lands in the future. If these parties had entered upon these lands prior to their selection by the State, no law was necessary for their relief, as their interests were safeguarded by the preëmption laws; if they occupied them after the government had deeded them to the State, they, and not the State, were responsible. But after this the governors themselves ceased to hope for a university, and their later messages are silent on the subject. The legislature, in turn, saw the inevitable, and on December 18, 1844, sent a memorial to congress asking for a modification of the compact between Arkansas and the federal government regarding the seminary lands, so as to permit Arkansas to apply the proceeds of the sale of said lands to the support of the common schools. On July 29, 1846, congress granted this request by authorizing the general assembly to appropriate the seventy-two sections for the benefit of common schools or for the promotion of education in any other manner that that body might deem wise.

This act closes the chapter so far as the proposed university is concerned. It meant that Arkansas was to have no state university until after the Civil War, and that then it was to be crippled for years for want of funds because of the poverty of the State brought on by the war and reconstruction. If the general assembly had adhered strictly to the policy at first adopted of holding the seminary lands at \$10.00 per acre, and had jealously guarded the fund, a respectable endowment would have accumulated and a university on a modest scale could

have been established before the war. Inexpensive buildings commensurate with the needs of the times could have been provided, teachers employed, and the institution conducted with a small outlay. The university and its endowment would have grown with the growth of the State. This would have been a significant fact in the history of the State. It would have meant a larger statesmanship in legislative halls and executive chairs, a more enlightened citizenship, less provincialism, and a broader policy in the development of the great material resources of Arkansas. The value to the intellectual, moral and material welfare of a state of a strong, vigorous university, articulating itself with every interest, cannot be estimated. How heavily Arkansas lost in her failure to regard the university fund as a sacred trust is beyond estimate.

In passing judgment upon our fathers for administering unwisely the school and seminary lands (Arkansas showed no more wisdom in handling the sixteenth section lands) we should remember that the legislators were inexperienced in such matters and the people were clamoring to get possession of the better class lands. Then it should be said that but few states in the Union had in 1836 a real public school system. Such as existed were feeble. None of the old states had a state university in the modern sense of the term, though some had them in name. Neither had any of the new states established a worthy institution on the basis of national land grants. Almost without exception colleges of the day were private foundations. Neither was there an effort to articulate such institutions with the public or private schools. There were but few public high schools in the country. Hence, there was educational chaos, no system. The problem of higher education was yet unsolved. The cause was still in the experimental stage and there was no educational Moses to guide. That Arkansas did not use to the best advantage her opportunities is no especial reflection upon her; it simply shows that she, in common with other states of her day, did not have educational statesmanship. Indeed, the mal-administration of the educational bounties became so notorious that the general government in recent years has been throwing more restrictions around the grant. For instance, when North Dakota, South Dakota, Montana and Washington were admitted

in 1889, congress fixed the minimum price at which the school lands could be sold at \$10.00 per acre.

The manner of administering the grant in a few other states is here given to afford a basis of comparison. Alabama received 46,080 acres for a seminary. The land was sold, part of the proceeds was used for buildings and the remainder was appropriated to aid the state banking system. For the amount thus squandered the state now recognizes an indebtedness to the university, upon which an annual interest of \$36,000.00 is paid. Missouri received two townships, sold the land before the university was founded and realized \$222,000.00. Of this sum \$122,000.00 is invested in state certificates of indebtedness at 6 per cent interest, and \$100,000.00 at 5½ per cent. The interest is applied to the maintenance of the university at Columbia. The State of Michigan sold the seminary lands and realized \$545,964.00. On this sum the state pays to the university annual interest at 7 per cent. Many other states like Ohio, Illinois and Wisconsin administered the lands poorly. Minnesota, Kansas and Nebraska profited by the experience of other states, and good results have come to their administration of the grants. The action of Alabama in reimbursing the university for the money squandered on the banking system suggests an awakened sense of public obligation that might well be followed by other states that wasted the grant.

LATER HISTORY OF THE SEMINARY FUNDS.

On December 23, 1846, the general assembly constituted the state land agent as the agent of the seminary lands, and authorized him to sell them at private sale. The price for the first year was fixed at \$4.00 per acre, for the second year at \$3.00, and thereafter at \$2.00. The purchaser was allowed five years to make final settlement. An act approved January 5, 1849, provided for the distribution of the proceeds of the seminary and saline lands among the several counties in proportion to the number of free white children between the ages of ten and twenty-one for the use of the common schools. It was to remain a perpetual fund. It was made the duty of the county treasurer to invest it in productive securities, and to distribute the interest among the school districts of the county. No part of the principal was to be expended.

The sales of the seminary lands up to 1850 were as follows:

By Governor John Pope.....	1,734.36 acres
By Governor James Conway.....	320.00 acres
By Governor Archibald Yell.....	5,661.34 acres
By land agent.....	9,081.51 acres
 Total	 16,797.21 acres

On October 31, 1837, State Treasurer William E. Woodruff reported to the credit of the fund \$2,124.53, of which \$72.20 was in cash, the balance in the form of notes. On October 1, 1840, there was in cash \$1,215.92 to the credit of the fund. The governor's message in 1842 reported the total seminary fund at \$29,652.25, of which \$2,188.40 was cash, the rest in notes. October 1, 1852, there was distributed among the counties for school purposes \$17,105.84 of the seminary fund. The governor's message for 1852 gives these facts about the fund:

Amount located	43,416.69 acres
To be located.....	2,663.31 acres
Amount sold	25,668.85 acres
On hand for sale.....	17,478.04 acres

The total amount received for said lands up to 1852 was \$37,319.00; amount still due for same, about \$60,000.00. The auditor's report for 1854 shows that during the preceding two years \$13,578.15 were distributed among the counties, and that \$6,953.92 remained on hand October 1 of that year. The amount distributed in the next two years was \$9,948.82, leaving a balance on hand October 1, 1856, of \$2,979.29. During the Civil War and reconstruction nothing much seems to have been paid in to the credit of this fund. The legislature remitted the interest on seminary land notes for the war period. The auditor's report for 1874 furnishes the following information:

To the credit of the seminary fund Oc-	
tober 1, 1872.....	\$1,962.26 in scrip
To the credit of the seminary fund Oc-	
tober 1, 1872.....	36.61 in currency
Receipt during the ensuing two years	4,522.82 in scrip
Expended during the ensuing two years	5,780.68 in scrip
Balance in treasury October 1, 1874....	704.40 in scrip
Balance in treasury October 1, 1874....	36.61 in currency

Later reports continue to show small amounts to the credit

of the fund until 1905-06, when the auditor says the last of the seminary lands had been sold.

The extracts given will serve to show that not only was no university founded, but that the common schools received a mere pittance from the seminary land grant. Aside from the low prices at which lands were sold, there were other causes. The failure of the state bank caused a small loss of probably two or three thousand dollars. Moreover, many notes were never paid. The notes and securities disclose that at times lands were bought by only a few persons who became surety for each other. In 1842 all the names on the notes, including surety, numbered less than twenty. Secretary of State David Greer, in his capacity as school commissioner, said in 1856 that the school lands were being sacrificed daily by a combination of interested persons. Moreover, it should be remembered that what little money was realized on the seminary lands was distributed among the counties as fast as it came into the state treasury. It then became the duty of the county treasurer to loan it out at interest, taking security. Some treasurers protected the funds by safe loans, others dissipated it by bad loans. What is left of this fund is now merged into the common school fund.

STATE SUPERVISION OF RAILROAD TRANSPORTATION IN ARKANSAS.

BY SAMUEL W. MOORE.

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IV. Summary and Conclusions.

TRANSPORTATION PRIOR TO 1868.

A. EARLY TRANSPORTATION.

At the date of her territorial organization Arkansas had a population of 14,000,³ with settlements dotted at intervals along the banks of her principal watercourses. The most practicable means of communication between these settlements was by the use of canoes, rafts and keel boats on water, though horses and wagons were used to some extent on land. The Territory was well supplied with natural facilities for water transportation.⁴ There were about 3,500 miles of waterways navigable

³Makers of Arkansas History, Reynolds, p. 46.

⁴Industrial Resources of the Southern and Western States, De Bow (JDB), volume I, p. 85.

for steamboats within the State, 1,500 for the year round and the rest for six or eight months.⁵ Road building dates from the establishment, in 1824,⁶ of a military road from Memphis, Tennessee, to Fort Smith via Little Rock. Other roads were authorized in the years 1825,⁷ 1827,⁸ 1831,⁹ 1833¹⁰ and 1834,¹¹ connecting by overland route the most important settlements within the State.

Laws¹² for the improvement of the roads were passed early in the history of the Territory, but little good resulted from this legislation on account of the fact that no tax¹³ was levied on the property of the State for carrying on the work. Colonel Sevier, who represented the Territory in congress from 1829 to 1836,¹⁴ succeeded in securing a land grant for public improvement,¹⁵ and liberal appropriations for improving navigable waters¹⁶ and completing the road¹⁷ from a point on the Mississippi River opposite Memphis, Tennessee, to Little Rock. Following this important legislation, streams were rapidly opened up and steamboats traversed the waters of the Territory, carrying hundreds of immigrants within her borders.¹⁸ Parallel with this accelerated growth of population came the increasing demand for statehood, which finally led, after much contention in congress and opposition¹⁹ by the anti-slavery element,²⁰ to the admission of Arkansas as a state June 15, 1836.²¹

The state road tax act was passed in 1838,²² wherein the counties were authorized, on petition of a majority of the taxable inhabitants residing therein, to levy a road tax on the property in the State, and a further impetus was given to the

⁵Arkansas Historical Association, volume I, p. 204.

⁶U. S. Stat., 5.

⁷⁸⁹¹⁰¹¹*Ibid.*, 135, 244, 463, 650, 724.

¹²Laws of Arkansas Territory, Steele & McCampbell (1835), pp. 493-500.

¹³History of Arkansas, Shinn, p. 110.

¹⁴*Ibid.*, p. 302.

¹⁵U. S. Stat., 235, 473, 531, 661.

¹⁶*Ibid.*, 289, 551, 553.

¹⁷*Ibid.*, 557, 713.

¹⁸History of Arkansas, Shinn, pp. 110, 111.

¹⁹Cyclopedia of Pol. Sc., Pol. Econ. and U. S. History, Lalor, volume I, p. 127.

²⁰Makers of History, Reynolds, p. 133.

²¹U. S. Stat., 50.

²²Arkansas Statutes, English (1848), Ch. 140, sections 72, 77 and 80.

cause of public improvement through the federal land grant acts of 1841²³ and 1842,²⁴ wherein congress granted to the State of Arkansas 500,000 acres of land for the improvement of roads, bridges, railroads, canals and water courses, and for draining swamps, and gave to the governors of the several states receiving the benefits of the acts power to conduct the sale of land and to apply the net proceeds to the establishment of better means of communication.

Notwithstanding the fact, however, that the carrying trade of the State was built up largely by water transportation, and through these natural watercourses and military roads in the State were necessary and answered their purposes in their time, as early as 1847²⁵ the commercial importance of better transportation facilities became apparent and the agitation for railroads began.

B. RAILROAD AGITATION.

During the early fifties many conventions were held throughout the southwest relative to the construction of railroads. Of the more important conventions that should be mentioned in this connection are the state convention²⁶ held at Little Rock, the national convention²⁷ held at Memphis, Tennessee, and the New Orleans convention.²⁸ While these represent respectively the different states, national and sectional interests, yet they are only a part of the general movement in the southwest directed toward influencing public opinion in favor of railroad extension. The Little Rock convention in particular passed resolutions for the purpose of organizing and directing a systematic canvas to this end, and provided for sending out speakers to address the people in the different parts of the State.

²³5 U. S. Stat., 453-458.

²⁴*Ibid.*, 471.

²⁵Ark. Hist. Assn., volume I, p. 206.

²⁶De Bow's (JDB) Review, volume 13, p. 526.

²⁷Industrial Resources of the Southern and Western States, De Bow (JDB), volume II, p. 506ff.

²⁸*Ibid.*, p. 458ff.

C. GOVERNMENT AND STATE PROVISIONS FOR RAILROADS.

The first railroads were chartered in the early fifties.²⁹ The Cairo and Fulton road secured its charter from the State January 12, 1853,³⁰ and the Mississippi, Ouachita and Red River Railroad Company was chartered³¹ the same year. Under an act dated March 9, 1853,³² congress granted to Arkansas and Missouri the right of way and grant of land for the construction of a railroad from a point on the Mississippi River opposite the mouth of the Ohio River to the Texas line via Little Rock with branches from Little Rock to Fort Smith and the Mississippi River. By virtue of this grant surveys were made for the Cairo and Fulton, and the Memphis and Little Rock and the Little Rock and Fort Smith roads were chartered the following year. "The first actual railroad construction work in Arkansas was done by the Mississippi, Ouachita and Red River Railroad Company,"³³ but the road was not built until many years later. The first railroad in Arkansas was built in 1858,³⁴ forming a part of the Memphis and Little Rock line extending from Hopefield, Arkansas, opposite Memphis, Tennessee, to Madison. Between 1859 and 1860 the line from Little Rock to DeVall's Bluff was completed. The middle section from Madison to DeVall's Bluff was not finished until after the Civil War. The intermediate distance between Madison and DeVall's Bluff was covered by stage. A line of boats was also operated from Memphis down the Mississippi and up White River to DeVall's Bluff, in connection with the western section.³⁵

D. EFFECTS OF THE CIVIL WAR.

The period of railroad construction initiated by legislation, both state and federal, favorable to the building and equipment of the Memphis and Little Rock road was suddenly cut short by the ravages of the Civil War. Commerce was in-

²⁹Hist. of Ark., Shinn, p. 163.

³⁰Ark. Hist. Assn., volume I, p. 206.

³¹Ibid., p. 207.

³²10 U. S. Stat., 155, 156.

³³Ark. Hist. Assn., volume I, p. 207.

³⁴Makers of Arkansas History, Reynolds, p. 174.

³⁵Ark. Hist. Assn., volume I, p. 207, and History of Arkansas, Shinn, pp. 163, 164.

terrupted, the wealth of the State depleted, due not so much to the war itself as to the upheaval and corruption of the government, particularly during the reconstruction period. State funds were appropriated for private uses, the burden of debt was increased needlessly, and the safe investment of private capital rendered an impossibility.³⁶

E. RAILROAD LEGISLATION AND RAILROAD CONSTRUCTION.

After the Civil War practically nothing was done toward the construction of railroads in the State until 1868, when the carpetbag government virtually took over the railroads, dividing them up among the members by establishing protectorates³⁷ over each system and moulding legislation to suit their own whims. State³⁸ and county³⁹ aid was authorized, relief granted,⁴⁰ and companies incorporated.⁴¹ The only actual construction work done between 1860 and the adoption of the constitution in 1868 was the completion of the Memphis and Little Rock line from Hopefield to Little Rock.⁴²

III. STATE SUPERVISION, 1868-1899. (THE LEGISLATURE AND ADVISORY COMMISSION.)

A. THE RAILROAD COMMISSION.

The constitutional convention of 1868 evinced a decided reaction against the post-Civil War policy, and promiscuous state aid was prohibited, the constitution stating specifically that "the credit of the State or counties shall never be loaned for any purpose without the consent of the people thereof, expressed through the ballot box,"⁴³ and from this there was no appeal except by constitutional amendment.⁴⁴ An effort was

³⁶Brooks-Baxter War and Reconstruction Period, Harrell, pp. 82-88ff.

³⁷Ark. Hist. Assn., volume I, p. 207.

³⁸Acts of Arkansas, 1867, No. 166.

³⁹Ibid., No. 36.

⁴⁰Ibid., No. 124.

⁴¹Ibid., Nos. 15, 87, 159.

⁴²Ark. Hist. Assn., volume I, p. 207.

⁴³Constitution of Arkansas, 1868, article 10, section 6.

⁴⁴Ibid., article 13, section 1.

made by the conservatives to secure the appointment of a railroad commission, and after a heated discussion a resolution was passed⁴⁵ by the convention authorizing the same, though nothing practical resulted from it.

The first practical step toward state supervision of railroads in Arkansas dates from the creation of the office of commissioner of public works and internal improvement,⁴⁶ the duties of which office in general were to inspect and report upon the condition of all the railroads within the State in which the State had an interest as a stockholder or by virtue of loans made thereto, to make annual reports on the railroad securities, mortgages and stocks held by the State, and on the extension and construction of lines in which the State was interested, and any other facts that would have a tendency to aid the general assembly in intelligent legislation thereon. The duties of this office associated with railroad legislation were merged with that of the railroad commission⁴⁷ created the same year, when the commissioner of public works and internal improvement was associated with the governor and secretary of state, forming a permanent body for the purpose of advising the legislature relative to the expediency of granting state aid to roads applying for the same.

B. PUBLIC SUBSIDIES.

There is no evidence brought out in the debates on the constitution of 1868⁴⁸ to show that the convention was attempting to follow the policy of any other state in their efforts to regulate state aid to railroads. Those who favored constitutional provision for a railroad commission argued the question on the ground of its fiscal expediency, while the opposition questioned its legality. Though the measure was strenuously opposed in the convention, the need for such a body in connection with a policy of state aid is evidenced by the agitation which resulted in the creation of the board by legislative action in the first session under the constitution.

⁴⁵Constitution of 1868 (*Debates and Proceedings*), J. G. Price, p. 159.

⁴⁶Acts of Arkansas, 1868, No. 53, section 8.

⁴⁷Acts of Arkansas, 1868, No. 71, section 25.

⁴⁸Constitution of Arkansas, 1868 (*Debates and Proceedings*), J. G. Price, p. 159.

The latter part of the reconstruction period is primarily a period of state aid to railroads and other forms of public improvement. The constitution of 1868 expressly stated that "the credit of the State or counties shall never be loaned for any purpose without the consent of the people thereof, expressed through the ballot box,"⁴⁹ but by legislative enactment⁵⁰ providing for the presentation of the question to the qualified voters of the State through the medium of an election that was later declared by the supreme court⁵¹ of the State to be illegal; the carpetbag government made the attempt, through the amendment referred to above, to evade the provisions of the constitution and authorized the issue of several thousand dollars' worth of bonds to each of the roads applying for them. The Cairo and Fulton Railroad refused to accept state aid on account of the fact that the State required a lien on the road to cover the amount of the bond issue. The other three land-grant roads and the Little Rock, Pine Bluff and New Orleans and Arkansas Central participated in the total state issue of \$5,350,000.00 in the following amounts:⁵²

Little Rock and Fort Smith R. R., 7% due April 1, 1900	\$1,000,000.00
Memphis and Little Rock R. R., 7% due April 1, 1899	1,200,000.00
L. R., P. B. and N. O. R. R., 7% due April 1, 1900....	1,200,000.00
Miss., Ouachita and Red R. R., 7% due April 1, 1900	600,000.00
Arkansas Central R. R., 7% due April 1, 1900.....	1,350,000.00

The plan followed by the State was to issue to each land-grant road \$10,000.00 per mile and to each non-land-grant road \$15,000.00 per mile, the whole issue to be secured by a lien on the road and on all land owned by the road.

In addition to the state bond issues the roads were often

⁴⁹Constitution of Arkansas, 1868, article 10, section 6.

⁵⁰Acts of Arkansas, 1868, No. 48, section 1ff.

⁵¹31 Ark., 701. The decision of the supreme court in this instance was based on the fact that no specific time for holding the election had been provided in the act, in which case the constitutional provision setting the time at ninety days after the end of the session obtained. The election was held November 3, 1868, during a recess which the legislature enjoyed from the 23d of July, 1868, to the 17th of November of the same year, the end of the session not occurring until April 10, 1869, hence the election was illegal.

⁵²Poor's Manual, 1895, p. 1208.

the recipients of local loans and bounties. The best example of this form of subsidy is shown in the case of the bounties given the Arkansas Central Railroad. In addition to the bonds issued by the State, the following bonds were issued and subscriptions made to the capital stock:⁵³

Phillips County Bonds.....	\$ 100,000.00
Helena City	150,000.00
Monroe County	100,000.00
Clarendon	25,000.00
Jefferson County	100,000.00
Pine Bluff	100,000.00
Personal Subscription	575,000.00
Total.....	\$1,150,000.00
First Mortgage Bonds.....	1,200,000.00
State Aid	*2,225,000.00
Grand total.....	\$4,575,000.00

The period of state aid to railroads⁵⁴ in Arkansas represents, at best, an abnormal growth in the fiscal policy of the State. State aid begins shortly after the organization of the federal military regime following the close of the Civil War and ends with the close of the reconstruction period in 1874.⁵⁵ The conservative element fought state aid throughout the history of its existence, not so much as a matter of principle, however, but rather because it furnished an avenue through which it was possible, with a semblance of legality at least, to pour the state funds into the coffers of private individuals. The legality of the question was settled through the action of the supreme⁵⁶ court of the State in declaring the election authorizing state aid unconstitutional, and the repudiation⁵⁷ of the issue by the State at a later date.

It is hard to arrive at any definite conclusion as to just

⁵³Arkansas Central Railroad Co., Arkansas State Loan, Malcom, R., 1872, p. 17.

*The data at hand is not sufficient to reconcile the apparent discrepancy between the figures given on pages 274 and 275; but it seems that direct appropriations were made from State funds during the period of the protectorates.

⁵⁴For internal improvement experiments in adjoining states, see Million's "State Aid to Railways in Missouri," especially pp. 196-220.

⁵⁵Poor's Manual, 1895, p. 1208.

⁵⁶31, Ark., 701.

⁵⁷Kirby's Digest, p. 108.

what the result of this policy was on the construction and extension of railroads in the State. If we take the increased mileage⁵⁸ immediately following the period as a criterion and compare with former periods, we might conclude that this attitude of the government had been productive of good; but when we take into consideration the character of the protectorates⁵⁹ established over the roads throughout the period, the low rates at which the bonds were sold, and also the fact that the whole bond issue was declared unconstitutional by the supreme court and later repudiated by the State, the solution is not so clear. It would seem, however, that the evidence would justify the conclusion that the rapid growth of the railroad net was due to causes other than state bounties.

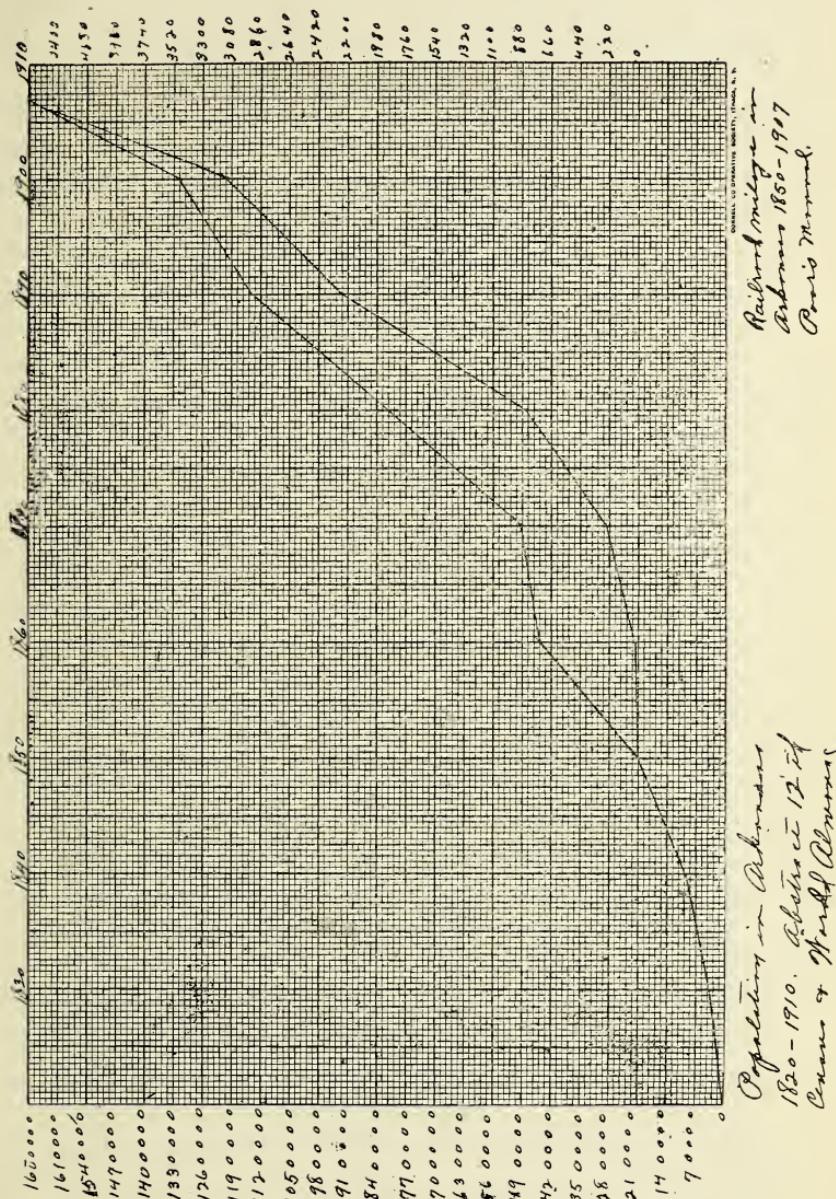
C. STATE INTERVENTION.

The present constitution,⁶⁰ adopted in 1874, contains a general provision for the construction and operation of railroads by corporations or associations organized for the purpose. All railroads operated or partly operated within the State were required to maintain one office therein, where transfers of stock should be made, and where books containing the amount of capital stock subscribed or paid in and amounts owned by each of the stockholders respectively, and transfers of said stock, names and places of residence of the officers, should be kept open for inspection to stockholders and creditors of the company. Undue or unreasonable discrimination in charges to individuals, associations and corporations for the transportation of freight or passengers within the State or going from or coming to the State was prohibited. Railroads transporting persons or property were required to deliver the same to any station at charges not exceeding the charges for the transportation of persons or property of the same class in the same direction to any more distant station, exceptions being made only in case of excursion and commutation tickets. Owning or controlling, by the same company, parallel or competing lines was prohibited, and discrimination in charges or facilities for transportation between

⁵⁸Cf. Chart.

⁵⁹Ark. Hist. Assn., volume I, p. 207.

⁶⁰Constitution of Arkansas, 1874, article 17.



transportation companies and individuals or in favor of either by abatement, drawback or otherwise, was prohibited, and all railroad companies, lessees, managers or employees thereof were required to refrain from making preferences in furnishing cars or motive power. Free passes to state officers were forbidden and a clause was inserted in the constitution authorizing the general assembly to correct abuses, excessive charges and unjust discrimination. The constitution further required annual reports from all the roads in the State, the same to be made to the auditor of public accounts by the directors of each road.

Legislative restriction on the freedom of private corporations takes on definite form in the year 1868,⁶¹ when the legislature passed a general act of incorporation, to which all companies were required to subscribe, and in which the State retained the right to demand annual reports and the right to alter or reduce tolls or other freights so long as such reduction would not bring net profits below 15 per cent of the capital stock actually paid in. Subsequent legislation followed, whereby penalties were provided for overcharge,⁶² rates established for roads not exceeding forty miles in length, and provisions made for further reduction of rates by the commission.⁶³ Consolidation of roads, such that the union would make a continuous line running in the same direction, was sanctioned by the legislature, but the consolidation of parallel competing lines was prohibited.⁶⁴ Discrimination in charges for transporting persons and property of the same class in the same direction, and discrimination between companies and individuals by rebate or otherwise is prohibited by law.⁶⁵ Pooling by combinations, contracts or otherwise, the freight earning business of the roads is prohibited.⁶⁶ Unnecessary delays are forbidden, rates are to be just and reasonable, and all roads required to post schedules.⁶⁷

In suits against the railroad companies the courts were authorized to compel any officer or agent of the company to

⁶¹Acts of Arkansas, No. 71, sections 28, 29.

⁶²Acts of Arkansas, 1877, No. 50, section 1; 1881, No. 42, section 3.

⁶³*Ibid.*, 1881, No. 42, sections 1 and 2.

⁶⁴*Ibid.*, 1881, No. 43, sections 1 and 2.

⁶⁵*Ibid.*, 1887, No. 81, sections 1 and 4.

⁶⁶*Ibid.*, 1887, No. 81, section 5.

⁶⁷*Ibid.*, 1887, No. 81, sections 6, 7 and 9.

produce the books or papers of such railroad corporation that might be a party to the suit, and the claim that testimony or evidence might tend to incriminate the persons giving same would not excuse them from testifying.⁶⁸ Separate compartments are required for white and African races, both in cars and stations.⁶⁹ Under an act of the legislature in the extra session of 1897,⁷⁰ state control and ownership of railroads was authorized, provision being made for a state board as a body corporate with power to build, equip and operate state railroads. Nothing practical came of this act, however, and the act was repealed April 6, 1901.⁷¹

Notwithstanding the previous attempts⁷² of the legislature to cope with the railroad taxation problem, considerable dissatisfaction existed throughout the State relative to the small valuations returned by the railroads for taxation. A board⁷³ of railroad commissioners, consisting of the governor, secretary of state and auditor, was created by the legislature in 1883,⁷⁴ for the purpose of ascertaining the value of all the railroad property owned, controlled or operated in the State, and in June of that year the board organized and proceeded to appraise the property of the railroads for the purpose of taxation. Before they had completed their work they were enjoined by the Pulaski chancery court in a suit brought by the St. Louis, Iron Mountain and Southern and the Memphis and Little Rock railroad companies. These companies declared that the act of the legislature authorizing their taxation was unconstitutional, basing their contention on the ground that they were exempt through the provisions of their charters. The cases were brought before the chancery court and decided in favor of the State. The roads appealed the case to the supreme court of the State⁷⁵ and to the supreme court of the United States,⁷⁶ but the State's right to tax the railroads was sustained in every court, the de-

⁶⁸Acts of Arkansas, 1887, No. 81, section 8.

⁶⁹*Ibid.*, 1891, No. 17, sections 1 and 4.

⁷⁰*Ibid.*, 1897, No. 38, sections 1-17.

⁷¹*Ibid.*, 1901, No. 84.

⁷²*Ibid.*, 1871, No. 35, sections 30-33.

⁷³For "Railroad Boards" see Ark. Hist. Assn., volume I, p. 208.

⁷⁴Acts of Arkansas, 1883, No. 114, sections 44-56.

⁷⁵41 Ark., 436.

⁷⁶112 U. S., 609.

cisions being based for the most part on the fact that the company had been reorganized and that exemption from taxation given by the legislature of 1853 was a personal immunity and could not pass to a reorganized corporation or company through the mortgage and sale of its charter and works, unless specific provision was made for it in the statute.

"In the meantime the board proceeded with its valuations and in 1884 assessed the railroads at \$6,352,985.00, in 1885 the assessment was placed at \$9,612,773.00, and in 1886 it rose to \$13,704,638.00, and in 1895 to \$21,333,232.00,"⁷⁷ the total mileage of all the railroads in the State at that time being 2,373.

The decision of the courts authorized the collection of taxes from 1883, but as no back taxes had been collected from the roads since 1874, the State instituted suit to recover back taxes, and again it was carried to the supreme court of the United States,⁷⁸ and on the same grounds on which the above decisions were based, the action of the lower courts was sustained. The back taxes thus recovered were equitably divided between the State, counties and school districts under the direction of the state board of education.

D. TRADE RELATIONS AND RATES.

The preventive checks instituted by the state government relative to rates on freight and express so far failed to produce the desired results. Minimum reductions on tolls and freight rates had been fixed by the legislature of 1868,⁷⁹ by virtue of which the roads were allowed to charge tolls sufficient to produce a net profit of at least 15 per cent of their capital stock actually paid in, and in 1881⁸⁰ this limit was reduced to 10 per cent; but on account of the fact that the rate was too high and that the profits could be deflected easily and made to appear under other items of account, the issue was avoided and the evil remained unabated.

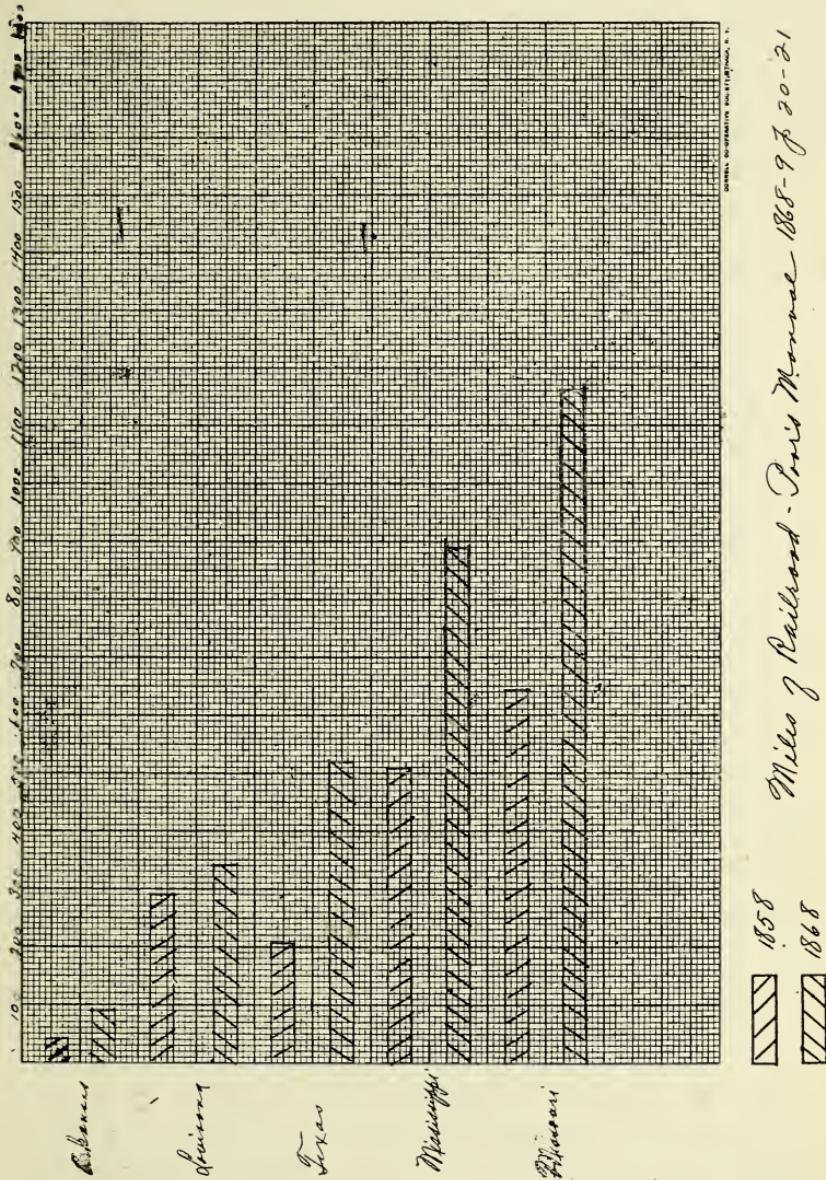
The abuses under this system are well illustrated in the attempt made by the bureau of mines, manufactures and agri-

⁷⁷History of Arkansas, Shinn, p. 248.

⁷⁸113 U. S., 465.

⁷⁹Acts of Ark., 1868, No. 71, section 29.

⁸⁰Acts of Ark., 1881, No. 42, section 2.



culture⁸¹ to distribute seed oats to the farmers in the State. The bureau made arrangements with the express companies to ship the oats at a slight reduction from the regular rates. It was found, however, that a number of the shipments were never taken from the office, and upon inquiry it was learned that the express charges in some instances amounted to \$1.80 per bushel, while common oats could be bought for twenty cents per bushel at either end of the line.

The conditions in the fruit belt were no better. Many persons shipping berries at their own expense and producing them with their own labor did not realize 25 per cent of the market price, and in some instances the expense exceeded the amount they were sold for by 25 per cent. It cost more to ship a barrel of apples from northwest Arkansas to Little Rock than the total expense connected with shipping the same goods from Virginia or Kentucky. As a result, Arkansas fruit was allowed to rot in the orchards. The same condition existed in other fields as well. "Cotton seed is freighted at 17 cents per bushel, which can be bought at either end of the line for 8 cents. Bituminous coal, which is sold at the bank for \$1.50 per ton, costs \$2.00 to send it to market. Zinc worth \$15.00 at the mines costs \$20.00 to transport. Corn worth in northwest Arkansas 25 cents per bushel is sold in Fort Smith at 75 and 80 cents, the cost of transportation added."⁸²

Thus one section of the State only one hundred miles from another suffered embarrassment and loss on account of the lack of those commodities which were produced in excess of demand in another part of the State, and the whole State was either directly or indirectly the victim of the deteriorating influences of an inequitable adjustment of transportation rates.

E. RESULTS OF LEGISLATIVE SUPERVISION.

The history of the period closing with the year 1899 brings to light two very important changes. The first in connection with the policy of the State toward the railroads, whereby state

⁸¹See Report of Bureau of Mines, Manufactures and Agriculture, Arkansas. 1889-1890, p. 23ff.

⁸²Report of Arkansas Bureau of Mines, Manufactures and Agriculture, 1889-1890, p. 25.

aid was discarded in 1874 and restrictive legislation instituted, and in the second place in connection with the policy of the roads themselves, wherein the purpose of the roads as common carriers and their lines as trade routes were prostituted by virtue of unequal rates, in the creation of monopoly and in the restraint of trade. Toward the latter part of the period a third movement begins with a decided reaction against the growing power and abuses of the roads and culminates in the establishment, in 1899, of the Strong commission, with power to regulate and control all roads within the bounds of the State.

The experience of the State to date proved that the legislature was in itself too unwieldly for the adequate supervision and regulation of the railroads. Meeting only once every two years, abuses coming up in the interval were allowed to run on untrammeled in the meantime, or the aggrieved public was forced to seek redress through the medium of the courts, in which case it was often difficult to decide which might be the lesser of the two evils—bear the burden in silence or take up an unequal fight in the courts, engendering often times only further discrimination and abuse by virtue of the ill will of the roads. Not only was this difficulty to be met, but the weakness of the legislative body was further shown in that it had not that skill along technical lines requisite for the solution of the intricate problems incident to railroad regulation.

In order to remedy these defects and correct the evils that had so long existed, the State, by supplying a body that could meet whenever practicable and investigate thoroughly all technical and intricate problems and provide administrative power as well, hoped to find relief, and in pursuance of this policy the commission with mandatory power⁸³ was created.

IV. STATE REGULATION, 1899-1910. (THE STRONG COMMISSION.)

A. THE FORMATIVE PERIOD.

The commission provided for at this time finds its origin

⁸³For a comparison of legislation with respect to railroad commissions in the different States, see Report of the Interstate Commerce Commission, Part IV, 1902, Appendix G, p. 45ff.

in a constitutional provision;⁸⁴ but its existence is authorized directly by legislative enactment.⁸⁵ The commission was at first appointed by the governor with the advice and consent of the general assembly in joint session, and provision was made for the appointment of three members, one chosen from the first and sixth, one from the second and third, and one from the fourth and fifth congressional districts; the same to hold office until the meeting of the next general assembly and until successors were qualified. A further provision was made, however, authorizing the election of three commissioners from the congressional districts mentioned. They were to be elected at the regular elections for a term of two years and paid a salary of \$2,500.00 per annum.

The purpose of the commission, as stated in the act authorizing its existence, was to examine and revise the rate sheets and tariff charges for freight or express matter for each railroad in the State, and "determine whether or not and in what manner, if any, such charges and rates are more than just and reasonable compensation for the services rendered, and whether or not and in what manner, if any, said charges and rates are in violation of any of the provisions"⁸⁶ of the state law; and the commission is required to "make reasonable and just rates of freight, express and passenger tariffs, to be observed by all persons and corporations operating any railroad or engaged in transporting persons, or property as express or freight"⁸⁷ in the State; and to "make rules and regulations as to charges at any and all points for the necessary hauling and delivery of express and freight; regulate rates and charge for such service on all railroads, * * * as justice to the public and said person or corporation may require, and so make the same conform to the requirements"⁸⁸ of the law.

The commission was further required to give notice to the person or corporation affected, "to appear and show just cause, if any it can, why no change should be made in rates, and to take into consideration the character and nature of the service

⁸⁴Constitution of Arkansas, 1874, article 17, section 10.

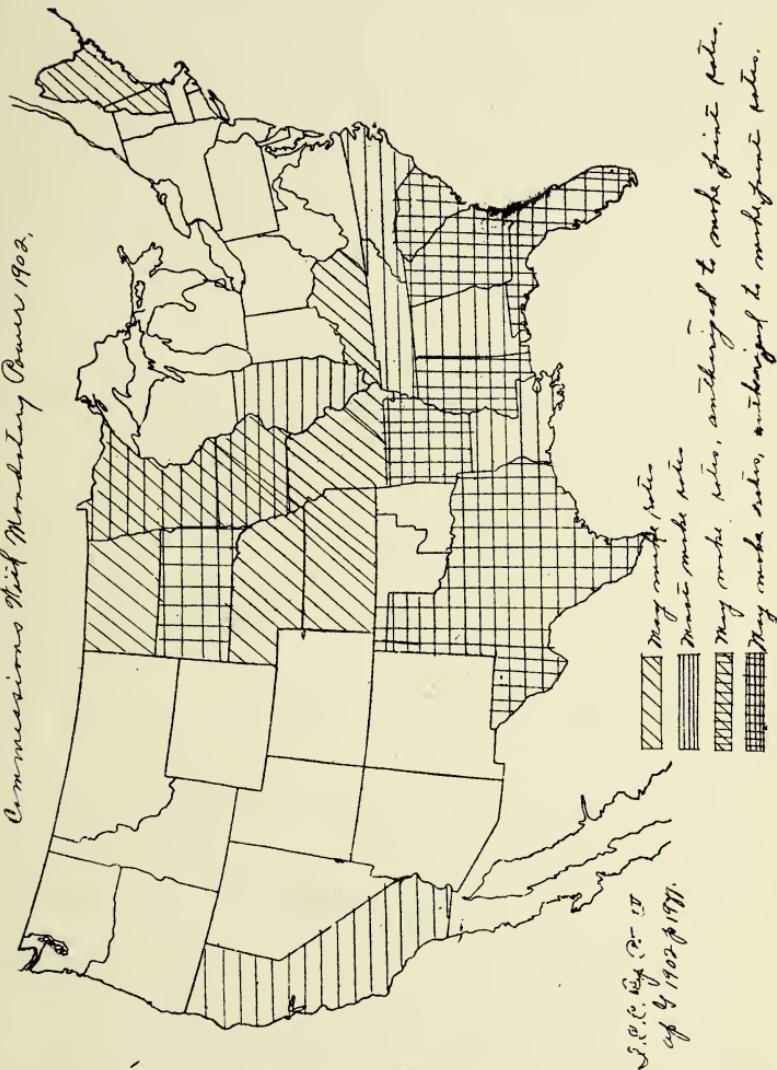
⁸⁵Acts of Arkansas, 1899, No. 53.

⁸⁶Acts of Arkansas, 1899, No. 53, section 9.

⁸⁷*Ibid.*

⁸⁸*Ibid.*

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to be performed, the entire earnings of any railroad or express company, the expense of operating same, the income and value thereof.⁸⁹ The commission was also expected to make tariff schedules for all the roads in the State, including those that had failed to submit rate sheets to the commission; but changes were not to be made in any case until ten days' written notice had been served on the company through one of its officers or agents, giving the company an opportunity to be heard.⁹⁰ When charges are corrected or approved the commission is required to append a certificate of approval and to give notice thereof to any officer or agent of the railroad or express company affected thereby, and the tariff charges are to be kept posted⁹¹ at least five days before they are to go into effect. All tariff charges thus approved by the commission are considered just and reasonable,⁹² though any company dissatisfied with the rate has the opportunity of appearing before the commission and the commission is required to conduct such hearing as may best be conducive to securing the truth in regard to the matter.

The first practical work done by the commission after organization was soliciting annual reports from the states that had commissions, in order to guide the members in their work. In addition to the foregoing, the commission made the attempt to secure the rate sheets of every railroad in the State, and to ascertain and apply the best plan for filing and indexing them in permanent form as a basis for the future work of the commission.

In taking up the work there were several problems that demanded the immediate attention of the commission. In the first place, a reasonable basis for rate making had to be worked out, and again complaints were made against the roads, charging them with discrimination and failure to adhere to their published rates. In order to test the former practices of the roads with respect to the charges made against them, to test the reasonableness of the then existing rates and to prevent discrimination during the time that would be required to revise the rate sheets of the roads, the commission adopted, temporarily,

⁸⁹Acts of Arkansas, 1899, No. 53, section 9.

⁹⁰*Ibid.*

⁹¹*Ibid.*, 1899, No. 53, section 10.

⁹²*Ibid.*, 1901, No. 24, section 1.

the rate sheets of the railroads. In following this plan the commission more than accomplished its purpose, since the agitation that resulted not only verified these charges of discrimination, but also brought to light the rates charged these favored shippers by the roads.

The aggrieved recipients of these favors at the hands of the railroads, upon asking for a renewal of leniency toward them, were informed by representatives of the roads that the commission had intervened between the roads and the shipper by setting a hard and fast rule, raising the rates and denying the road the right to make terms with the shipper, and as a result of this report a protest⁹³ was raised against the railroad commission from all parts of the State. The railroads continued to agitate the feeling thus engendered by elaborating on the injustice and folly of a law that prevented a person from securing a thing as cheaply as possible, with the result that the shipper felt that both the railroads and himself were the victims of a dire calamity. The truth of the matter was that the commission had compelled the roads to adhere⁹⁴ to the rates they had published and follow the schedules that they themselves had promulgated, the commission to date having had nothing to do with rate making.

Although the first test of the commission was perhaps the most trying one, everything considered, yet the commission was able to turn to account the enemy's weapons against it when rate making proper began; the protests that brought about the temporary embarrassment of the commission also bringing to light the actual minimum rate at which the roads could carry on their business; or, at any rate, it brought to light the charge made to favored shippers and this rate was later used by the commission as a basis for their new rate schedule.

B. WORK OF THE COMMISSION.

The rate sheets in vogue when the commission was organized and the one which was the most extensive in its influence was the distance tariff,⁹⁵ a scheme that had been adopted by almost

⁹³Report of Arkansas Railroad Commission, 1899-1900, p. 6.

⁹⁴*Ibid.*

⁹⁵Report of Arkansas Railroad Commission, 1899-1900, p. 9.

all the roads in the State and taken from the rate sheets adopted during the high prices that followed the Civil War, by the old defunct Cairo and Fulton Railroad Company. The object of this tariff was to furnish a reasonable return during a time of extravagant prices, and it would have continued to produce a desirable revenue had it not been that the means defeated the end and rendered business stagnant. It was the highest tariff, but could have been made the best had proper means of revision been applied to it. The other two tariffs existing at this time were known as the jobber's rate and the local rate. The jobber's rate was a special rate lower than the distance tariff from the jobbing point to outlying points, but it was a one-way rate and did not apply from outlying points to the jobbing center.

The local rate was also a lower rate than the distance tariff and was primarily a to-and-fro rate, giving the same rate to the outlying point and back to the jobbing point, but did not apply to intermediate stations. The result of this system would have been that the jobbing centers would have grown at the expense of the local stations, had it not been for the fact that interstate points were given the same and sometimes even a lower rate than the jobbing centers within the State. The roads used the proportional system, that is, making "the local rate the balance of the through rate, or rather the difference of the through rate between the local station and the trade center from the original point of shipment."⁹⁶ Had the roads applied that rate justly, it might not have worked so badly for the public interest; but the roads applied it to only a few published rates and only to stations that made the haul in, which is a discrimination against not only the patrons of the roads, but other roads as well. This rate was often applied to shipments not authorized by published rates and in favor of the influential shipper. The working of this system may be illustrated specifically. The St. Louis, Iron Mountain and Southern Railroad runs parallel with the Arkansas River for one hundred and fifty-six miles, from Little Rock to Fort Smith, near the western border of the State. Memphis, Tennessee, also on the Iron Mountain route, lies one hundred and thirty-five miles east of Little Rock, and is so situated that all the business

⁹⁶Report of Arkansas Railroad Commission, 1899-1900, p. 16.

coming over the road from Memphis, billed to the Little Rock and Fort Smith line, must come via Little Rock. Ordinarily, by any just system of rates the charge should be less from Little Rock to points on the Fort Smith line; but such condition did not exist, the rate from Memphis in many instances being lower. The rate on flour and feed from Memphis to points on the Fort Smith road was 15 cents per hundred pounds, while the rate from Little Rock, seventy miles west and beyond, was 17½ cents per hundred pounds. The rate on cast iron, pipe, etc., was one-third higher from Little Rock to points west than was the rate from Memphis to the same points. Not only was this true for a few commodities, but for practically every usable article shipped into the State. As another example, take the index points, St. Louis, Little Rock and Arkadelphia. Arkadelphia is sixty-five miles south of Little Rock on the main line of the Iron Mountain route. Taking as a basis for the calculation the difference between the through rate from St. Louis direct to Arkadelphia, and a combination of the St. Louis and Little Rock locals to Arkadelphia, and it was against Little Rock in favor of St. Louis on merchandise, "first-class rate, \$3.50 per 1,000 pounds; second-class, \$2.75 per 1,000 pounds; third-class, \$1.90 per 1,000 pounds; fourth-class, \$1.20 per 1,000 pounds; and car lots, class five, 90 cents per 1,000 pounds; class A, 80 cents per 1,000 pounds; class B, 50 cents per 1,000 pounds; class C, 20 cents per 1,000 pounds; class D, 20 cents per 1,000 pounds; and class E, 10 cents per 1,000 pounds."⁹⁷

As a result of this system, it is evident that large distributing points could not be built up within the State; but that is not all—many business men were attracted to these interstate distributing points, taking with them the wealth and talent that should have been used in building up the industries of the State, to say nothing of the constant drain made on the agricultural communities with no corresponding return to the State in any form.

Other examples might be given showing even greater inequalities⁹⁸ between the through interstate rates and combinations of the local rates. The complaint was not made against

⁹⁷Report of Arkansas Railroad Commission, 1899-1900, p. 14.

⁹⁸*Ibid.*, p. 15.

the charge for through shipments, but rather against the inequalities and discrimination in the combinations of the local rates showing at every point of attrition between the railroads and public interest the sacrifice of the public in favor of the railroads.

In addition to abrogating these more immediate evils, the commission proposed, by promulgating the new schedule, to "insure a low rate on the necessities of life; second, to develop manufacturing interests by giving low rates on manufactured products of the State; third, to take the right to fix the price of certain farm products from the grasp of the combines, by inviting competition at home and abroad; and fourth, to prevent a change of rate by a change of classification."⁹⁹ The commission did not claim that the plan adopted would prove a panacea for all ills, but they hoped to combine utility and simplicity in such manner that the schedules would inspire confidence on the part of the public, and again that the schedules might be so arranged that the roads would be forced to appreciate their position as carriers merely, and not as media for monopoly and discrimination, thwarting the growth of trade and industry.

One of the first investigations made by the commission led them to the conclusion that a combination¹⁰⁰ existed among the cotton mills of the State, the object of which was to suppress competition in the purchase of seed. The mills were able to affect a combination by dividing the State into districts and attaching to each mill certain territory to which its purchases of seed were to be confined exclusively, and from which the purchases of all other mill owners were to be excluded. This combination was rendered effective by a schedule of freight tariffs so adjusted as to render it unprofitable for independent local or foreign mills to compete with the combination's prices. The immediate effect of the commission's tariff was to break up this system,¹⁰¹ which restored competition, raising the price of seed and giving the planter a fair return for his product.

The second innovation made by the commission was in con-

⁹⁹Report Arkansas Railroad Commission, 1899-1900, p. 23.

¹⁰⁰Report Arkansas Railroad Commission, 1899-1900, p. 26.

¹⁰¹*Ibid.*, p. 27.

nnection with the cotton tariff. It had been the custom of the railroads to charge a high local rate on flat cotton to compress points, and after compression to rebill the shipments to foreign market points, refunding the charge for the local haul and charging the through rate for compressed cotton from the original point of shipment to the place of destination. The commission reduced the rate on the local haul from 25 to 50 per cent, expecting that the roads would continue the old practice of refunding¹⁰² the local rate on shipments rebilled to foreign points. On the date the new tariff went into effect the commission was advised by the cotton men that the roads had notified them that they would no longer follow the practice of refunding the local haul. In order to meet this move on the part of the roads, the commission issued a circular, making it effective with the new tariff, requiring the roads to observe the former refunding system.¹⁰³ The roads ignored this order on the ground that the required time for notice¹⁰⁴ had not been given. The commission then promulgated the order giving time for the required notice. The roads then took up the fight on the ground that the commission was attempting to regulate an interstate rate, hence they continued to ignore the order. The commission, on the other hand, took the ground that by the circular they did not undertake to make or in any way affect an interstate rate, but only a local rate, since the first haul was made wholly within the State and only for purposes of preparation of future shipment, or that it was "milling in transit," the haul made up of two distinct parts, the first wholly within the State and subject to the jurisdiction of the commission. On account of the fact that the public did not understand the grounds for contention on the part of the commission, so much opposition to the tariff was raised that it was canceled¹⁰⁵ by the commission December 18, 1899, and the former cotton tariff reinstated, provided the roads would refund the local rate as formerly. From this time until 1903 no cotton tariff was made by the commission, but on May 13, 1903, an

¹⁰²Report Arkansas Railroad Commission, 1899-1900, p. 30.¹⁰³*Ibid.*¹⁰⁴*Ibid.*, p. 31.¹⁰⁵Report Arkansas Railroad Commission, 1899-1900, p. 33.

order was issued¹⁰⁶ by the commission covering the point practically as outlined by that body four years earlier.

Before the commission had proceeded very far with its work it became apparent that it had not received sufficient power by virtue of the act authorizing its existence and defining its powers, hence it was forced to ask the legislature for more power. As a result of this condition of affairs the commission deemed it advisable to defer issuing a revised rate sheet until sufficient power was given the commission to carry out its orders, and in the meantime the commission merely attended to the supervision and regulation of the old western classification schedule as adopted in the earlier part of its work.

Following this unavoidable delay, the commission prepared the standard freight distance tariff and issued the same, to become effective April 10, 1900,¹⁰⁷ applying on classes and commodities on all stations on the St. Louis, Iron Mountain and Southern Railroad and branches; the St. Louis Southwestern Railroad and branches; the St. Louis and San Francisco Railroad and branches; the Kansas City, Fort Scott and Memphis Railroad and branches; the Kansas City, Pittsburg and Gulf Railroad and branches, and the Choctaw, Oklahoma and Gulf Railroad and branches, these roads constituting at that time the main trunk lines in the State.

The classification outlined by the commission followed in general the plan set out in the western classification schedule. There were ten commodity groups set out in the schedule, with a different rate for each group. The first five classes were designated by the numbers from 1 to 5, while the second five were designated by the letters running from A to E. The numbers running from 1 to 4 include commodities shipped in less than car load lots, while the six remaining classes apply to shipments in car load lots only. The more bulky commodities, forty-two in number, including such articles as lumber, grain, salt, stone, packing house products, live stock, hay, flour, coal, cement, cotton seed, brick, etc., were given individual rates. Many of these commodities were classified in both car lots and less than car lots, with rates to suit each particular case. The

¹⁰⁶*Ibid.*, 1903, p. 181.

¹⁰⁷Report Arkansas Railroad Commission, 1899-1900, p. 285.

whole scheme was a distance tariff schedule, quoting rates per hundred pounds, per mile, flat quotations given per hundred pounds, from five miles to three hundred miles, on all classes and commodities.

Even though the commission made out comparative schedules showing both the commission's tariff and the old railroad schedules,¹⁰⁸ it is hard to arrive at any definite conclusion as to what the exact percentage of reduction was. It was estimated by the roads, however, that the reduction amounted to about 30 or 35 per cent. Aside from the actual reduction of rates, it was conceded by a majority of the commission that "time has proven the wisdom and attests the virtues of the commission's standard freight tariff, effective since April 10, 1900, and that for cheapness, simplicity and equality of freight rates, Arkansas leads all states west of the Mississippi River."¹⁰⁹ At all points where the commission's tariff came in contact with rates from interstate points, it had the effect of breaking down the interstate rate by proportionate reductions from such points. The commission's tariff completely broke down the rates from Memphis and St. Louis into the State. This fact is attested by an article appearing in the *Commercial Appeal*, which runs as follows: "The new tariff cuts the rate from Memphis and the Iron Mountain points in Arkansas from 40 to 60 per cent of what it was only a short time ago, and cuts fully 25 per cent off the present tariff in effect there. Memphis will then be on a competitive basis with Cairo, St. Louis, Little Rock and Pine Bluff, for all that section of the country to which it is the natural gateway and in which the trade has been already doubled by a former slight reduction in the rate."¹¹⁰

The merits of the commission's tariff with respect to building up the manufacturing interests of the State are well brought out in a communication addressed to the commission by a representative business man residing in the northwestern part of the State. He states in part that "it is an advantage to us as an inducement to manufacturers to locate here where we

¹⁰⁸Report Arkansas Railroad Commission, 1899-1900, p. 303.

¹⁰⁹Report Arkansas Railroad Commission, 1902, p. 6.

¹¹⁰*Commercial Appeal* (Memphis), September 6, 1901.

have all classes of material for their use, and they can surely manufacture the raw material into finished articles and ship to a better advantage than they could at the time they were at the mercy of the railroads and were compelled to locate at some competitive point, or not locate at all. Now, as the rate is stated from point to point, they can locate at whatever point is best suited to their purpose, with the certain knowledge of what their freight rate will be to the state line and some competitive point where reasonable rates are obtainable.

"In fact, it is a step in the right direction, and one whereby you protect the people much more efficiently than many other commissions now in existence, and we feel sure that if you are allowed to continue your work you will save the State many times the cost of your maintenance each year, beside giving us a reputation with the outer world which we have not heretofore obtained."¹¹¹

The result of the commission's work is shown locally by the effect of the reduction of rates on cotton seed. Not only was the district monopoly broken up, but discrimination between shippers was, if not wholly broken up, reduced to a minimum. The foreign monopoly at outside jobbing points was completely broken up, as is attested by comments made in the *Memphis Appeal* covering the relation of interstate rates to local conditions and to the jobbing points. There is no means at hand of ascertaining the exact result of the tariff in percentages; but since the roads were unable to prove that the rate was an unjust one,¹¹² and since the extension of the railway net was not checked materially,¹¹³ it is probably reasonable to suppose that the reduction was, as the commission claimed for it, a just and a reasonable rate. At best it was only a schedule based on the old system of rate making used by the roads, the prime differences being that the commission gave to all the shippers of the State the same rates that the roads had given to only their more favored patrons.

As has been stated in the foregoing pages, the roads claimed that a reduction of 30 or 35 per cent had been made in

¹¹¹Report Arkansas Railroad Commission, 1899-1900, p. 22.

¹¹²I. C. C. Rep., 598.

¹¹³Cf. Chart op., p. 14.

rates,¹¹⁴ which position is without doubt a tenable one; but with the commission it was not a question of rates in comparison with the old rates, but rather the question of reasonable and just rates. In the hearings before the commission made in protest against the new schedule, the roads were unable to show that the reduction should not be made, so the revised schedule was retained.

When the legislature authorized the commission's existence, it not only gave it control over the regulation of the railroads, but also over the express¹¹⁵ business of the State. The commission prepared a revised schedule to become effective September 1, 1900, canceling all express rates¹¹⁶ existing at that time, provided they were not lower than those prescribed in the schedule. This scheme, as in the case of the freight schedule, was on a mileage basis, and the rate made on 100-pound shipments. There were five classifications of articles in the schedule, the first group corresponding to "merchandise" in current express classification, the second applied to shipments classed as "general specials," and the third applied to green fruits, vegetables, berries, grapes, etc., the fourth to melons and coarse vegetables, and the fifth to shipments of ice. The rate as provided in the schedule for the first group corresponds very nearly to the rate on first-class freight as provided for in the new classifications made by the commission. A secondary classification was made on the same basis to cover shipments of less than one hundred pounds. The commission further provided for joint rates¹¹⁷ for two or more express companies by adding together the regular mileage rates prescribed by the schedule between points and then deducting 10 per cent of such sum unless a special rate of 90 per cent or less existed over a portion of the route, then the full rate should be employed in making joint rates, and that when joint rates between two points determined by the rule set forth in section "C" of the existing express classification (packages weighing seven pounds or less) is lower than that made under the foregoing rule, each lower

¹¹⁴Report Arkansas Railroad Commission, 1899-1900, p. 23.

¹¹⁵Acts of Arkansas, 1899, No. 53, section 9.

¹¹⁶Report Arkansas Railroad Commission, 1899-1900, p. 278.

¹¹⁷Report Arkansas Railroad Commission, 1899-1900, p. 280.

rate shall govern. There were exceptions¹¹⁸ made to this ruling also, first that when two or more routes of express are in operation between shipping point and destination, the lowest rate applicable by any of such routes shall be adopted by the other express companies accepting shipments for transportation between such points, and the plans for determining charges on classes of express matter set forth in the current express classification were to hold, provided they were no higher than the provisions in the new tariff schedule.¹¹⁹

Switching charges were promulgated¹²⁰ by the commission early in the history of its existence and maximum charges¹²¹ made for distances of three miles and under, at the rate of three dollars per car; five miles and over three miles, three and one-half dollars per car; seven miles and over five miles, four dollars per car. The roads were allowed to absorb switching charges, but in so doing were not allowed to discriminate in commodities or in shippers. Demurrage rules were also promulgated¹²² by the commission requiring the roads to notify consignee or his agent of the arrival of goods, setting the number of hours for which roads are responsible for goods received at destination, and prohibiting discrimination in charges and in shippers. The demand for reciprocal demurrage rules presented itself to the commission in 1902¹²³ and led to the promulgation of a ruling¹²⁴ to that effect in 1905. The stipulations provided in this order were that when the shipper makes application for cars the railroad company is required to furnish same within five days, and, provided cars are not used by shipper, he shall pay demurrage at the rate of one dollar per day. Applicants may, however, set the day ahead by giving five days' notice. Freight in less

¹¹⁸*Ibid.*, p. 281.

¹¹⁹A few slight changes have been made, such as defining more clearly what is meant by "green fruit" as used in the schedule, providing for the return of empties, and defining the dimensions of crates containing millinery. A slight change has also taken place in the method of determining joint rates, a reduction on joint rates from 90 per cent of the sum of the locals to 120 per cent of the continuous mileage rate.

¹²⁰Report Arkansas Railroad Commission, 1899-1900, p. 246.

¹²¹*Ibid.*, p. 296.

¹²²*Ibid.*, p. 80ff.

¹²³*Ibid.*, 1902, p. 85.

¹²⁴*Railway Age*, Vol. 40, p. 112.

than car load lots must be received for shipment and bill of lading issued immediately. When shipments are thus received they must be forwarded at not less than fifty miles per each day of twenty-four hours, allowing twenty-four hours for transfer from one road to another or where rehandling is involved, and for the addition of time incident to delay on account of accidents.

The free-pass evil was also taken up, and in 1905¹²⁵ the commission required the roads to furnish a list of the names of all persons to whom free or reduced rates of transportation were issued; and also to furnish a statement of the kind of free or reduced rates furnished to each individual and under what provision of the state statutes such transportation was furnished.

Provisions were also made by the commission for straight line mileage¹²⁶ rates applying on branches where it was evident that they were controlled by the same management, even though operated under different names, as well as on the main trunk lines. Rules governing excess of car load lots¹²⁷ were made, the ruling requiring that the first car must be loaded to capacity and the excess loaded in a second car and carried at the same rate. Regulations were provided for the measurement of forest products, grain, clay, sand, etc.;¹²⁸ the use of terminals¹²⁹ was defined, and regulations were passed relative to the disposition of shipments, cars, etc., received at terminal points from other roads.¹³⁰

The first test of the commission's work made in the courts was brought by the Pacific Express Company¹³¹ in the federal courts for the western division of the eastern district of Arkansas, in which the express company secured a temporary order enjoining the commission from enforcing rates or bringing any suits for penalties or infractions. The suit was compromised and dismissed at the cost of the express company. As a result

¹²⁵ *Railway Age*, Vol. 40, p. 400.

¹²⁶ Report Arkansas Railroad Commission, 1902, p. 305ff.

¹²⁷ *Ibid.*, p. 308.

¹²⁸ *Ibid.*, pp. 309, 310.

¹²⁹ *Ibid.*, p. 312.

¹³⁰ *Ibid.*, p. 313.

¹³¹ *Ibid.*, 1899-1900, p. 37.

of this suit a schedule of express rates was adopted, which, although not as low as proposed at first, effected a reduction of 40 per cent of the rates under the classification authorized by the express companies.¹³²

The second test in the courts was a suit brought by the Fort Smith Chair Company to determine whether a shipment billed from an Arkansas point to another point in Arkansas on the same road, even though the haul takes the shipment outside the State, is intrastate business or not. The case in point was that a shipment was delivered to the Kansas City Southern Railroad at Fort Smith by the Fort Smith Chair Company and billed as a continuous shipment to Grannis, Arkansas. In transit this shipment passed into the Indian Territory and back again into Arkansas. The case was fully argued before the commission, duly considered, and the shipment held on the ground that the points of origin and destination were within the State, to be domestic commerce.¹³³ The Kansas City Southern road obtained, in the federal court, an order enjoining the commission from bringing any suits to enforce penalties until the case had been heard before the courts. The case was finally decided against the commission; such shipments held by the circuit court¹³⁴ to be interstate business on the ground that since the shipment "extended to" another state, it could not be intrastate business, while the supreme court of the United States¹³⁵ held that the haul must be exclusively within the State to fall under the control of the State.

The Arkansas and Louisiana, the Arkansas Central, the Little Rock and Hot Springs Western and St. Louis, Iron Mountain and Southern each brought suit and secured a temporary injunction to prevent the application of the commission's schedule; denying the commission's power to make joint rates and charging that the commission's rates were ruinous, low and unremunerative. These cases were decided against the commission in the courts,¹³⁶ but all the points were covered at a later date

¹³²Report Arkansas Railroad Commission, 1899-1900, p. 37.

¹³³*Ibid.*, p. 38.

¹³⁴106 Fed. Rep., 353.

¹³⁵187 U. S., 617.

¹³⁶*Railway Age*, Vol. 32, p. 4.

in a special act of the legislature requiring the commission to make joint rates.¹³⁷

The fourth important test of the commission was made in the case of the Choctaw, Oklahoma and Gulf road, in which it appeared that the railroad company was discriminating against small shippers in furnishing cars for the transportation of coal. The commission brought suit in the courts to recover damages and secure judgment for a penalty of \$1,500.00, together with attorneys' fees and costs. The railroad company appealed the case to the supreme court of the State, and, on the ground that the road had not discriminated in favor of persons using cars and shipping under similar conditions, and had not attempted to tear down one man's business at the expense of another, the matter was decided in favor of the road.¹³⁸

C. PASSENGER RATES.

Even as late as 1902 the commission had not taken steps to regulate passenger fares, though the legislature had taken the matter in hand prior to that time and fixed the rates by statutory measure.¹³⁹ Roads fifteen miles in length or less were allowed to charge eight cents per mile, fifteen miles in length and less than seventy-five miles in length, five cents per mile, and on lines over seventy-five miles in length three cents per mile.

Proposals were made in 1905 to reduce fares on lines less than fifteen miles in length from eight cents to seven cents, and on lines more than seventy-five miles in length from three cents to two and one-half cents, but the measure failed to meet the approval of all the members of the commission, after a thorough investigation of conditions, and the old rate was confirmed.¹⁴⁰

Nothing further was done until the legislature took up the matter in the spring of 1907, changing the rate on roads fifteen miles in length and less to five cents per mile, and on lines over fifteen miles in length and less than eighty-five miles in length to three cents per mile, and over eighty-five miles in length to

¹³⁷Acts of Arkansas, 1903, No. 130, Secs. 3 and 4.

¹³⁸73 Ark., 373.

¹³⁹Acts of Arkansas, 1887, No. 129.

¹⁴⁰Report Arkansas Railroad Commission, 1905, p. 55ff.

two cents per mile or fraction thereof.¹⁴¹ The rates for children were left practically as they had been from the beginning, one-half the above rates for children between the ages of five and twelve years, who were accompanied by adults, and the rate free for those under five years of age. The commission changed its schedule about three months later to conform to the statute.

During the year 1909 the roads secured an injunction pending a suit against this ruling and for a time they charged three cents per mile on all first-class fares and gave rebate tickets for one cent per mile pending the outcome of the suit. In order to uphold the position taken by the State and to carry the project to a successful issue, the legislature empowered the commission to defend the suit and provided funds to meet the expense connected with this,¹⁴² and, in a later act, subsequent¹⁴³ litigation incident to carrying out the orders of the commission. These suits were settled by compromise, as will be shown fully in the paragraph on the rate war, and the supreme court of the State rendered a decision December 13, 1909,¹⁴⁴ holding that the law creating the commission was constitutional and that the commission had the power to fix three cents as a maximum passenger rate, and that penalties for violation of an order of the commission are valid.

D. LEGISLATION.

In order to meet the demands made on the commission from time to time, the legislature further enlarged its powers and extended its privileges. The first¹⁴⁵ of these acts supplements the act authorizing the commission by providing for the selection of an expert rate clerk to aid the commission in its work, and providing funds for transportation and paying the salaries of the members of the commission. The first of these supplemental acts delegating enlarged powers¹⁴⁶ to the commission deals with the question of rates. Absolute power was given the commis-

¹⁴¹Acts of Arkansas, 1907, No. 8.

¹⁴²Acts of Arkansas, 1909, No. 8.

¹⁴³*Ibid.*, No. 37.

¹⁴⁴*Railroad Age Gazette*, Vol. 47, p. 1209.

¹⁴⁵Acts of Arkansas, 1899, No. 119.

¹⁴⁶*Ibid.*, 1901, No. 24.

sion to determine what the fares should be, to pass upon the reasonableness of same, and the opinion of the commission was to be final. In 1903 the power of the commission was seriously limited by an adverse decision in the courts relative to the power of the commission to make joint rates. To restore this power the legislature authorized¹⁴⁷ the commission to make through rates on freight and express, and in case roads could not adjust rates, by virtue of dissatisfaction, disagreement or otherwise, they were authorized to make joint rates. This power was further augmented in 1909¹⁴⁸ by virtue of an act giving the commission power to inspect all track, road, bridges and equipment, and in case the commission deemed the same unfit for the transportation of passengers with reasonable safety, to force the roads to repair the same. In case the roads refused to comply with the orders of the commission the charge of felony could be lodged against the offender and imprisonment in the penitentiary imposed for not less than two nor more than ten years.

The period beginning with 1905 is characterized by the number of acts passed by the legislature relative to the improvement of facilities for the accommodation and safety of the traveling public and the patrons of the railroads in the State. The general tendency of this legislation is shown through the acts of the legislature providing, in certain specific instances, for the erection of depots¹⁴⁹ at points of lesser importance, the construction of viaducts¹⁵⁰ over streets and roads, the stopping of trains¹⁵¹ at small stations for the accommodation of passengers, and the operation of additional trains¹⁵² over lines where it seemed that the public interest required it.

E. THE RATE WAR.

The rate war in Arkansas begins in the spring of 1907, when, by legislative enactment,¹⁵³ the existing three-cent passenger rate was reduced, on lines eighty-five miles in length

¹⁴⁷Acts of Arkansas, 1903, No. 130, Secs. 3 and 4.

¹⁴⁸*Ibid.*, 1909, No. 163.

¹⁴⁹Acts of Arkansas, 1905, No. 93; 1907, Nos. 56 and 177; 1909, No. 350.

¹⁵⁰*Ibid.*, 1905, Nos. 147 and 240; 1907, No. 66; 1909, No. 197.

¹⁵¹*Ibid.*, 1905, Nos. 130 and 292; 1907, No. 96; 1909, No. 117.

¹⁵²*Ibid.*, 1905, No. 123; 1907, Nos. 19 and 444; 1909, No. 72.

¹⁵³Acts of Arkansas, 1907, No. 8.

and over, to two cents. This rate was approved by the commission three months after its passage and continued operative until September 3, 1908, when the reduced passenger and freight rates promulgated by the commission were enjoined¹⁵⁴ by Judge Van Deenter, now of the United States supreme court, on the ground that they were not compensatory and therefore unconstitutional.

Attempts were made to compromise pending suits, but the commission refused to retract their position relative to the two-cent fare and asked the legislature for funds with which to carry on litigation.¹⁵⁵ Pending the outcome of the suit the roads not only raised passenger fares from two to three cents a mile, but also made material increases in freight rates.¹⁵⁶ Following this action on the part of the roads, a conference was arranged between the state officials and officers of the roads in the hope that the matter might be settled amicably; but no decision was arrived at, nor did it appear that a compromise was at all probable. At this juncture the St. Louis and San Francisco Railroad Company filed a three-cent rate with the commission,¹⁵⁷ and to all appearances, at least, the rate problem was as far from solution as before the commission began its work. In addition to the foregoing, nine short lines brought suit in the federal court to enjoin the two-cent fare, claiming that it was confiscatory. The state law allows a charge of three cents per mile on lines fifteen and twenty-five miles in length; but the commission held that when a continuous trip was made over a short line and a connecting trunk line the two-cent fare should hold.¹⁵⁸ The matter was put to the test when the commission was enjoined by the courts at the instance of the Little Rock and Hot Springs Western railroad from enforcing the two-cent fare or reducing freight rates.¹⁵⁹

The railroads took advantage of the unsettled condition of affairs and promulgated a new rate schedule, which went into effect November 2, 1909. Following this, the commission issued

¹⁵⁴ *Railroad Age Gazette*, Vol. 45, p. 926.

¹⁵⁵ *Railroad Age Gazette*, Vol. 45, p. 973.

¹⁵⁶ *Ibid.*, p. 1163.

¹⁵⁷ *Ibid.*, p. 1214.

¹⁵⁸ *Ibid.*, p. 1264.

¹⁵⁹ *Railroad Age Gazette*, Vol. 45, p. 1309.

orders prohibiting the collection of these rates on the ground that they were unreasonable, and that the rates promulgated by the commission were just.¹⁶⁰ The first move on the part of the commission took form in the nature of an order issued November 11, 1908, directing state and county officials to proceed against the roads for accepting rates fixed by themselves instead of the commission's tariff.¹⁶¹ As a result of this action on the part of the commission, Judge Trieber of the federal district court, in an opinion rendered November 19, 1908, held that the Arkansas Railroad Commission had been guilty of contempt of court for thus proceeding against an injunction of the federal court, and he ordered that the suits against the railroads be withdrawn or that the commission prepare to defend themselves.¹⁶² These contempt suits were ended November 20, 1908,¹⁶³ when the prosecuting attorney at Little Rock dismissed the suits against the roads and the announcement was made two weeks later by the commission that its intention was not to make an order fixing rates until the suit was settled in the federal court.¹⁶⁴

An attempt was made by the commission to have the injunction granted by Judge Van Deventer restraining the enforcement of the two-cent fare set aside, but the request was refused by Judge Trieber.¹⁶⁵

The first step toward the amicable settlement of the dispute occurred May 1, 1909, when both the Rock Island and Frisco systems voluntarily reduced passenger fares to two and one-half cents per mile, at which time it appeared likely that the other lines in the State would adopt the same rate.¹⁶⁶

Following this move on the part of the roads, negotiations were entered into between the attorneys for the State and representatives of the roads, and a tentative plan agreed upon for terminating the litigation, which was submitted to the governor

¹⁶⁰*Ibid.*

¹⁶¹*Ibid.*, p. 1411.

¹⁶²*Ibid.*, p. 1455.

¹⁶³*Ibid.*

¹⁶⁴*Ibid.*, p. 1550.

¹⁶⁵*Railroad Age Gazette*, Vol. 46, p. 518.

¹⁶⁶*Ibid.*, p. 912.

and by him to the legislature.¹⁶⁷ The compromise provided for (1) Freight rates fixed by the federal court which are adapted to yield about 33½ per cent more revenue than the rates fixed by the state commission, to be given a trial for a year; (2) The railways to move for a dissolution of the injunction issued by the federal court restraining the State from enforcing rates fixed by public authority, the roads to be without liability on their bonds unless the suits are subsequently reinstated; (3) The roads to keep and furnish to the commission separate accounts and detailed reports of their intrastate traffic, and open their books to inspection by the commission and its representatives; (4) The commission to be at liberty to correct any inequalities in rates and to make changes to meet changes in conditions, but not so as to reduce materially the roads' revenues; (5) The railways to reduce passenger rates to two and one-half cents per mile on roads over eighty-five miles long; (6) At the end of a year either party to be at liberty to reinstate suits and proceed with the litigation.¹⁶⁸

A temporary compromise was reached between the State and all the railroads except the Iron Mountain and the St. Louis Southwestern railroads, that the railroads would put in the freight rates promulgated under an order of the federal court known as the "court tariff"¹⁶⁹ and a two-and-one-half-cent passenger rate, for one year, which agreement was continued until October, 1910. It was further understood that if either the State or any railway was dissatisfied with results at the end of a year it might revive the litigation. In the meantime the litigation between the State and the Iron Mountain and the St. Louis Southwestern railroads continued. The testimony in chief on both sides was all in by the 12th of July, 1910, but the rebuttal and sur-rebuttal was not taken until the end of the year.

The present situation with respect to the rate problem is briefly summed up by Judge Trieber in a letter dated February 15, 1911, in which he states that "I am now engaged in going over the proofs submitted in the Arkansas railroad rate cases.

¹⁶⁷*Ibid.*, p. 1000.

¹⁶⁸*Railroad Age Gazette*, Vol. 46, p. 1000.

¹⁶⁹*Railroad Age Gazette*, Vol. 47, p. 161.

The record is so voluminous, there being twelve thousand pages of evidence and over two hundred and fifty exhibits of different schedules, that it will take me at least six months to finish the work. At present I am unable to give any information as you will readily understand that the testimony is very conflicting."*

F. RESULTS OF THE COMMISSION PLAN OF REGULATION.

The present status of the relations of the railroad situation to the public shows a marked improvement over the preceding period. From the beginning the commission was able to control the situation equitably, and with but little difficulty. It is true that the commission has had its share of litigation, but this period represents, for the most part, the earlier stages of development in each of the different fields toward which the commission was required to direct its attention. There can be no doubt as to the wisdom of the plan adopted by the State in overthrowing the old legislative regime and delegating the supervision of the railroads to a commission with mandatory power. The period of legislative supervision shows a steady growth of abuses, discrimination and monopoly, which the legislature was wholly unable to check; while, on the other hand, the commission, by virtue of intelligently directed effort coupled with power to act, has been able to master the situation—first through enforced uniform rates resulting in equalized opportunity, and second, through a reduction of rates that reduced abuses to a minimum.

In addition to the valuable work of the commission in connection with the regulation of rates, the interests of the public were carefully looked after in connection with demurrage rules, switching charges, etc., and protection accorded not only the public, but the roads as well. The work of the commission in ferreting out the attempt made by the roads to avoid the freight distance tariff by operating short lines or branches as separate roads has resulted in furnishing reasonable rates and better shipping facilities to the patrons of those lines. The commission's revised express schedule has resulted in a material reduc-

*Judge Trieber rendered a verdict deciding against the contention of the commission with respect to both freight and passenger rates. In June the legislature made an appropriation to enable the commission to appeal the case to the supreme court of the United States.—EDITOR.

tion of rates, and the commission has been called upon to defend, in what seems to promise in the near future a favorable issue, the passenger rates established in 1907 by the legislature.

Aside from the unsettled condition of the rate question, the greatest problem confronting the commission at the present time is the question of furnishing cars to the shippers of the State. The coal and lumber industries of the State are growing rapidly and the roads seem to be unable to meet the demands made upon them for cars. The roads take the ground that if they distribute their cars equitably and without partiality as far as they go they have done their part, while the commission takes the ground that the roads should furnish ample shipping facilities to all patrons along their lines regardless of the cost of service or of equipment. Problems of this and a similar nature are promptly met by the commission and the legislature is continually increasing its powers to meet the exigencies of the cases presented.

Advices from the best and latest authorities on the subject would seem to indicate that from the standpoint of the roads the Arkansas commission has not been as conservative as it should have been,¹⁷⁰ and that it has not been entirely free from political entanglements;¹⁷¹ but, notwithstanding this tendency to criticize the commission, the roads are rather inclined to think that the future is not without promise, and that an adjustment of the present litigation will take place which will be for the mutual benefit of all parties concerned.¹⁷² The work of the commission has been attested¹⁷³ by the Interstate Commerce Commission in the matter of rate making, and since the network of lines shows a healthy increase¹⁷⁴ and the reports from the roads themselves show reductions in the cost of material¹⁷⁵ and labor¹⁷⁶ and also a higher efficiency of labor,¹⁷⁷ it is reasonable to suppose that the reduction of rates meant simply a fairer

¹⁷⁰ *Railroad Age Gazette*, Vol. 45, p. 1654, and *Ibid.*, p. 1648. See "South" roads, B. & H.

¹⁷¹ *Ibid.*, p. 1654.

¹⁷² *Ibid.*, pp. 1648 and 1654.

¹⁷³ 11 I. C. C. Rep., 598.

¹⁷⁴ Cf. Chart, p. 281.

¹⁷⁵ *Railroad Age Gazette*, Vol. 45, p. 1647.

¹⁷⁶ *Ibid.*, p. 1646.

¹⁷⁷ *Ibid.*, p. 1644.

distribution of the returns of industry dependent on transportation, even if we do not take into account the increased revenue resulting from the increase of business that necessarily follows such reduction, and that the commission has grounds for its contention and should have the support and coöperation of the State.

The larger problem that presents itself to the average state commissioner recurs here as well as elsewhere, namely, the question of interstate vs. intrastate rates. The commission's freight distance tariff not only lowered intrastate rates, but also worked a material reduction on the excessive interstate rates that originally affected the shippers of the State. The commission's power is operative directly, however, on only about 15 per cent of the business of the State, the rest being interstate business; so there is no doubt a question yet to be settled—a fact that is emphasized in particular in this section by the attempt¹⁷⁸ made by the commissions in Arkansas, Oklahoma and Texas to work out a system of interstate rates for themselves.

V. SUMMARY AND CONCLUSIONS.

In the preparation of this paper no attempt at comparative study has been made; but rather, with the sources at hand, to present a brief history of state supervision of railroads in the commonwealth of Arkansas.

This survey covers briefly the beginning of the growth of railroads in the State; the period of state aid, explaining it away through the political corruption of the reconstruction period; the reaction against this policy following the adoption of the constitution of 1874—characterized by stringent restrictive legislative measures and the failure of the policy, due largely to the fact that the legislature is, as a body, too unwieldy and lacks the skill requisite to deal with such problems; the appointment of the commission with mandatory power, its plan of work, tests of its power, and results; and a review of recent legislation, the rate war, and present tendencies with respect to the railroad situation in the State.

On the whole, the plan adopted by the State has been re-

¹⁷⁸*Railway Age*, Vol. 45, pp. 126 and 192.

restrictive; and since the period of state aid following the Civil War represents at best but an abnormal development in the state policy toward the railroads, it need not be given an important place in a discussion of the larger policy adopted by the State.

While it is true that the rapid growth of the railway net in the State begins about the time the need for restrictive legislation presented itself in other states, it is equally true that restrictive legislation in Arkansas was a direct result of the reaction against the liberal policy of state aid adopted by the carpetbag government following the Civil War. This restrictive policy received momentum in the early eighties, due to the abuses and practices of the roads, and was followed with increasing rigidity by the legislature until the late nineties, at which time the failure of this method of regulation became apparent and the State threatened with industrial disaster as a result of the abuses in connection with transportation rates. To check the march of the octopus the commission with power was appointed, with the result that the menace to the industry of the State was averted, and, instead of serving as a medium for discrimination against the producer and intrastate distributor, the power of the roads was taken away and they are meeting, as common carriers, the needs of the State and performing important service in building up the trade and developing the resources of the State.

There can be no doubt as to the wisdom of the policy of creating the state railroad commission in Arkansas. In states where the population is static and the State's resources are largely developed, the mandatory commission may not be necessary; but the plan followed here has proven itself beneficial not only to the public, but also the roads themselves. Even though the commission has been accused by the roads of playing polities, nothing so far has developed to justify the charges and the roads themselves are inclined to look more favorably on the work of the commission during the last year than they were wont to do in years past.

The commission's schedule covers only about 15 per cent of the business carried on in the State, but by operating effectively over this small territory it has had the effect of materially

lowering the interstate rate on the other 85 per cent as well. It is undoubtedly here that the crucial test of the commission will take place. Already the commission has suffered more than one rebuff at the hands of the federal courts, and with the continuation of the present growth of federal centralization, coupled with the disposition on the part of our statesmen* to place extreme liberal construction on the constitution, particularly the clause dealing with the regulation of commerce among the several states, it is evident that the sphere of the state commission is, in the future, doomed to confinement to narrow limits.

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**Cf.* speech made by Attorney General Wickersham before Illinois State Bar Association, Chicago.

THE POST OFFICE IN EARLY ARKANSAS.

BY NATHAN B. WILLIAMS.¹

The post office is a public establishment for the purpose of performing such public services as it may by law be authorized and required to undertake. Its origin is lost in the early history of the race.

The conception of the early post was generally that of a means by which the officials of the country transacted public business, but by the fifteenth century it became customary in many countries to employ its services for the convenience of the general public. There was a fragmentary municipal post in several of the American colonies previous to 1693.

February 7, 1691, Thomas Neale, Esquire, was granted letters patent by William and Mary, with full power and authority to "erect, settle and establish within the chief parts of their majesties' colonies and plantations in America, office or offices for the receiving and dispatching of letters and pacquets, and to receive, send and deliver the same under such rates and sums of money as the planters shall agree, and to hold and enjoy same for the term of twenty-one years."

Neale, under this patent, secured enactments of the different colonies authorizing him to conduct a post office and the same was operated from New Hampshire to Virginia with some cross-posts until 1707, when the Neale patent was bought back by the English king for the sum of 1,664 pounds sterling, and thus was brought to an end the first and last private post in America.

The English government then administered the post office in the colonies through postmasters general, among whom was the distinguished Benjamin Franklin, up to Christmas day,

¹Nathan Boone Williams was born near Whitner, Arkansas, August 26, 1873. He received an elementary education in the common schools, and at the age of fifteen entered Hindsville Academy, where he spent three years under Wilson Southerland. Mr. Williams studied law under the late David Walker, and entered the practice of law at twenty-one, at Fayetteville. He served twelve years as United States commissioner under appointment of the late Judge John H. Rodgers. Mr. Williams is the author of "American Postoffice," printed as senate document 542, sixty-first congress, second session, and of magazine articles discussing existing postal laws.—EDITOR.

1775, when the intercolonial service was abandoned by the British authorities.

As an aid to the development of the spirit of independence prevalent among the leaders of colonial thought, there was proposed in the year 1774 a "constitutional American post office." This service was organized by William Goddard of Baltimore, printer of the *Maryland Journal*, and passed into the control of the continental congress July 25, 1775, and Benjamin Franklin was made postmaster general at a salary of \$1,000.00 per annum. Thus was the American post office made free almost one year prior to the declaration of independence.

On the adoption of the constitution of the United States the control of the post office was given to the federal government by the following paragraph:

"The congress shall have power to establish post offices and post roads."

In the early days congress appropriated money for opening and keeping in repair stage roads and paths to the interior in order that the mails might follow the sturdy pioneer and his family and afford them the means of communication, the comforts of friendly correspondence, the lights of the periodical press and keep them in touch with the activities of the government. These hardy pioneers early came to what is now Arkansas, and very shortly the government mail rider followed them.

The congress of the United States passed, on March 2, 1819, an act forming Arkansas Territory, but at least as early as July 1, 1817, there was one post office in what is now Arkansas and its name was "Arkansa," Missouri territory, and Eli J. Lewis was postmaster.

Table of the extent of the post roads, amount of postages collected, compensation of postmasters, incidental expenses, cost of transporting the mail, etc., in the Arkansas Territory for the years 1820, 1821 and 1822:

	Years		
	1820.	1821.	1822.
Extent in miles of post roads.....	732	732	1,257
Extent in miles on which the mail was actually carried	582	732	732
Amount of postage collected on letters.....	\$787.27	\$634.43	\$672.10
Postage collected on newspapers.....	48.10	37.23	34.79
Compensation of postmasters.....	291.68	238.52	250.00

Expenses of Postmasters.	Net Balance of Postmasters' Accounts.	Expense of Transporting the Mail.	Balance Against Each State.	Amount Collected From Each State, etc.
\$33.27	\$510.42	\$3,509.38	\$2,998.96	\$219.00
77.25	355.89	5,591.89	3,236.00	618.00
29.18	426.71	3,517.94	3,091.23	764.49

For the year ending March 31, 1827, the post offices in the Territory of Arkansas produced postage as follows:

Arkansas	\$ 53.68	Little Rock.....	\$ 254.19
Batesville	80.05	Long Prairie.....	16.93
Clark courthouse.....	26.50	McLean's Settlement.....	1.98
Crawford courthouse.....	264.99	Marion	2.99
Crittenden courthouse.....	2.61	Miller courthouse.....	88.93
Crystal Spring.....	.18	Mouth of White River.....	9.74
Dardanelle	15.05	Peconery	11.62
Davidsonville	28.84	St. Francis.....	1.20
Dwight	16.59	Villemont	16.76
Helena	65.82		—
Hempstead courthouse.....	77.86	Total of Arkansas Territory	\$1,046.49
Hix's Ferry.....	8.11		
Izard courthouse.....	1.87		

For the year ending 1828 they produced postage as follows:

Arkansas	\$ 44.45	Little Rock.....	\$ 278.24
Batesville	87.85	Long Prairie.....	13.62
Clark courthouse.....	30.38	Marion	11.51
Crawford courthouse.....	192.73	Miller courthouse.....	71.89
Crittenden courthouse.....	7.61	Mouth of White River.....	13.93
Crystal Spring.....	3.61	Peconery	9.37
Davidsonville	20.28	St. Francis.....	2.99
Dwight	22.83	Villemont	23.47
Helena	63.36	Cantonment Gibson.....	134.52
Hempstead courthouse.....	149.37		—
Hix's Ferry.....	5.31	Total of Arkansas Territory	\$1,195.46
Izard courthouse.....	7.94		

For the year ending March, 1830, the post offices in the Arkansas Territory produced postage as follows:

Arkansas	\$ 50.53	Little Rock.....	\$ 248.24
Batesville	114.54	Lost Prairie.....	10.21
Cane Creek.....	8.28	Marion	15.99
Cantonment Gibson.....	281.86	Miller courthouse.....	23.81
Clark courthouse.....	18.00	Mouth of Cache.....	20.56
Clark's Salt Works.....	.83	Mouth of White River.....	26.78
Columbia	1.31	Nicksville	7.73
Conway	11.84	Peconery	11.70
Jackson	8.98	Cosetot	7.12
Lafayette courthouse.....	6.97	Crawford courthouse.....	80.37

Crystal Spring.....\$	4.15	Pine Bluff.....\$	16.54
Davidsonville	30.31	Pleasant Hill.....	49.06
Dwight	31.30	St. Francis.....	52.24
Fayetteville	12.18	Tekatoka	10.23
Greenock	13.99	Villemont	47.74
Helena	94.03	Vineyard	11.37
Hempstead courthouse.....	71.96		—
Hix's Ferry.....	6.25	Total of Arkansas Territory	\$1,425.72
Izard courthouse.....	18.72		

The amount of postage accruing at each post office in Arkansas Territory in the year ending March 31, 1834, was as follows:

House Document 176, Twenty-third Congress, Second Session.

A statement of the amount of postage accruing at each post office in each state and territory for the year ending March 31, 1834, etc.

ARKANSAS TERRITORY.

Arkansas	\$ 90.38	Martin's	\$ 3.58
Batesville	221.87	Miller courthouse.....	.....
Bayou de Roche.....	4.85	Morrison's Bluff.....	46.62
Big Creek.....	4.52	Mouth of Arkansas River	14.87
Black's .....	.....	Mouth of Cache.....	22.85
Cabeen's	28.12	New Gascony.....	11.98
Cane Hill.....	173.85	Paraclifta	20.92
Cosetot	1.71	Pine Bayou.....	11.79
County Line.....	.45	Pine Bluff.....	83.73
Crawford courthouse.....	80.00	Pleasant Island.....	11.47
Crowley's	6.33	Pleasant Hill.....	.....
Dardanelle	25.80	Point Remove.....	14.39
Desarc	8.52	Heckatoo	5.50
Dogwood Spring.....	9.61	Helena	107.56
Dwight	50.23	Hix's Ferry.....	24.09
Fairview	13.52	Hempstead	138.02
Fayetteville	221.02	Hot Springs.....	47.88
Fort Smith.....	222.60	Izard courthouse.....	29.23
Fort Towson.....	19.22	Jackson	23.95
Fourche Dumas.....	15.12	Jacob's Staff.....	29.69
Grande	3.55	King River.....	.47
Greenock	26.74	Lafayette courthouse.....	34.15
Cantonment Gibson.....	164.44	Lake Port.....	40.50
Choctaw Agency.....	19.52	Languelle	9.35
Clark courthouse.....	54.81	Lee's Creek.....	11.04
Clinton .....	.....	Lewisburg	55.24
Columbia	233.83	Liberty	9.03
Conway	19.22	Litchfield	35.05
Corea Fabre.....	29.39	Little River Lick.....	87.37
Logan's	17.26	Little Rock.....	879.60
Lost Prairie.....	.....	Richland Creek.....	23.11
Magnet Cove.....	5.43	St. Francis.....	118.68

Saline Crossings.....	\$ 18.23	Vineyard	\$ 78.90
Scotia	28.98	War Eagle.....	29.34
Short Mountain.....	84.10	White River.....	44.88
Spadra Bluff.....		White Run.....	.....
Strawberry River.....	11.00	Wolf Creek.....	13.73
Tekatoka	3.22		.....
Talbert's	17.91	Total of Arkansas Ter-	
Ultima Thule.....	8.92	ritory	\$4,100.21
Van Buren.....	50.78		

In 1824 the following post routes existed in Arkansas:

Greenville, presumably in Missouri, Newport to Pinkney once every week, eight miles, at an annual expense of \$100.00.

Jackson to Greenville fortnightly, fifty miles, at an expense of \$480.00.

Greenville to Batesville once a week, 124 miles, annual expense of \$849.00.

Batesville to Little Rock once a week, 104 miles, \$750.00.

Memphis to Arkansas fortnightly, 140 miles, \$500.00.

Little Rock to Arkansas fortnightly, 120 miles, \$500.00.

Little Rock to Crawford courthouse fortnightly, 155 miles, \$575.00.

Little Rock to Miller courthouse fortnightly, 215 miles, \$1,000.00.

Clark courthouse to Natchitoches once every four weeks, 320 miles, \$500.00.

Cahawba, Arkansas, to Greenville weekly, 70 miles, \$600.00.

Under date of January 16, 1826, the postmaster general reported to congress a list of post routes established within these two years, and few, if any, had produced one-third part of the expense of carrying mail on the same. The following routes are included in this list:

Route No. 407, touching Greenville in Missouri, Fourche De Thomas and Davidsonville in Arkansas Territory, produced \$178.52 in postage, while the expense of mail carrying was \$849.11.

Route No. 410, Little Rock to Arkansas, produced \$42.08, at an expense of \$500.00.

Route No. 412 proceeded from Little Rock by way of Clark courthouse to Miller courthouse. Route No. 413 ran from Clark courthouse to Natchitoches, Louisiana. These routes remained in this condition in the years 1827 and 1828.

On March 4, 1830, in a list given by the postmaster general of the post routes on which the mail is carried on Sunday, appears the following:

IN ARKANSAS.

From Memphis, Tennessee, to Greenock, Arkansas Territory.
Little Rock to Nicksville.
Little Rock to Miller courthouse.
Batesville to Little Rock.
Hempstead courthouse to Natchitoches.
From mouth of Cache to Helena.
Mouth of Cache to mouth of White River.
Memphis to Little Rock.
Batesville to Izard courthouse.

The total length of post roads in Arkansas Territory on the 1st of July, 1832, was 1,932 miles, and upon these roads the mail was carried on horseback and in sulkies, at a total cost of \$193,076.00 for the year.

On May 13, 1820, post roads were established by lines in Arkansas Territory from St. Michael's, Missouri, by Batesville and Lawrence courthouse to Arkansas, and from Cadron by Pulaski courthouse and Hempstead courthouse to Wachita courthouse, Louisiana.

At different times congress made appropriations for opening and completing roads in Arkansas, and on April 11, 1836, just prior to the admission of the State in June, 1836, we find in senate document 300, twenty-fourth congress, first session, a report on the subject upon which we have abstracted the following:

Estimates of funds for completing roads in Arkansas, and for which road appropriations have heretofore been made:

Little Rock to St. Francis River.....	\$ 30,000.00
Jackson to Fort Smith.....	25,000.00
Strong's to Batesville.....	35,000.00
Helena to mouth of Cache River.....	10,000.00
Columbia, in Chicot County, to Little Rock.....	20,000.00
From the southern boundary line of the state of Missouri to the town of Fulton, on Red River.....	20,000.00

	\$140,000.00

Appropriations have been made for the first named road at different times. The first act is that approved January 31, 1834.

The second, third and fourth roads were authorized and appropriated for by the act of June 30, 1834.

The fifth road was authorized and appropriated for by act of June 30, 1834.

The sixth road was appropriated for on March 2, 1831, July 3, 1832, and February 24, 1835.

Appended hereto is a post route map of Arkansas bearing date of 1839, which shows the post routes in existence at that time.

The reader will have doubtless already discovered many names and places which now no longer appear upon the map of the State. As to the exact location of these places, or as to what has become of them, their history and that of their people, is left for other investigators. This paper is only intended to be a compilation of original sources of material upon this subject.

According to the reports of the post office department in 1828, there existed the following counties and principal post office in each, in the Territory of Arkansas:

Counties.	Principal Post Office.
Arkansas.....	Arkansas.
Chicot	
Clark.....	Clark courthouse.
Conway.....	
Crawford.....	Crawford courthouse.
Crittenden.....	Greenock.
Hempstead.....	Hempstead courthouse.
Independent.....	Batesville.
Izard.....	Izard courthouse.
Lafayette.....	Lost Prairie.
Lawrence.....	Davidsonville.
Lovely.....	Nicksville.
Fuller.....	Fuller courthouse.
Phillips.....	Helena.
Pulaski.....	Little Rock.

ARKANSAS COUNTY.

Arkansa "Mo. T."	Heckatoo.
Eli J. Lewis, July 1, 1817.	Thompson Simpson, November 29, 1832.
Arkansas.	Henry I. McKenzie, May 5, 1834.
Eli J. Lewis, "new bond, July 15, 1828."	Philip Read, March 12, 1836.
Hewes Scull, June 2, 1830.	Reuben Dye, July 14, 1836.
Changed to Arkansas Post, De- cember 27, 1831.	Mouth of Arkansas. Wm. R. Campbell, March 12, 1832.

Charles Mapes, December 6, 1832.
 Stephen Van Rensselaer Ryan, February 17, 1835.
 South Bend.
 James H. Lucas, November 11, 1835.

White River.
 William Montgomery, June 1, 1826.
 Joseph Bennett, January 7, 1836.

CARROLL COUNTY.

Carrollton.
 Henderson Lafferty, January 15, 1834.
 Hiram Davis, December 31, 1835.
 Blythes.
 John Blythe, December 31, 1836.
 Crooked Creek.
 Joseph Hickman, July 14, 1836.

King's River.
 John P. Boidston, December 30, 1833.
 Marion Clement, November 18, 1834.
 John W. Moore, June 11, 1836.

CHICOT COUNTY.

Bartholomew, discontinued March 27, 1829.
 John O. Dabney, November 29, 1832.
 Edward Wiley, December 19, 1833.
 Lake Port.
 William B. Patton, April 28, 1830.
 Joel Johnson, December 15, 1831.
 S. R. Gilmore, November 8, 1832.
 Henry Roberts, February 17, 1835.
 Grand Lake.
 Nathan B. Quilling, October 3, 1834.

S. E. Jones, September 9, 1835.
 (Villemont) [changed to Columbia].
 Alanson Morehouse, February 20, 1830.
 James Blaine, March 1, 1833.
 Hiram Morrell (?), August 24, 1835.
 Fulton.
 Lewis Johnson, December 20, 1834.
 Charles McDermott, January 19, 1836.

CHOCTAW NATION.

Choctaw Agency.
 F. W. Armstrong, June 26, 1833.
 Fort Coffee.
 James A. Scott, April 20, 1835.

Eagle Town.
 Loring S. Williams, July 1, 1834.
 Geo. F. Lawton, April 22, 1835.
 Loring S. Williams, March 31, 1836.

CLARK COUNTY.

Caddo, discontinued April 18, 1831.
 Jacob Barkman, November 25, 1828.
 Clark e. h.
 Jacob Barkman, February 23, 1820.
 Samuel M. Rutherford, July 11, 1822.
 Willis Dilliard, June 29, 1825.
 Jacob Barkman, February 4, 1826.
 Daniel Ringo, March 27, 1828.
 Moses Collins, May 27, 1830.
 Archibald Rutherford, March 15, 1834.

Franklin Settlement, discontinued July 13, 1829.
 Thomas Franklin, January 19, 1827.
 Raymond.
 John S. T. Callaway, June 11, 1835.
 Wolf Creek.
 William Gentry, January 18, 1832.
 Asa Thompson, May 21, 1833.
 John D. Robinson, March 8, 1834.
 John Spear, December 20, 1834.

CHEROKEE NATION.

Kidron.

James Orr, September 17, 1833.

CONWAY COUNTY.

Cadron Hills.

Abner Pitts, May 25, 1829.
 Benjamin Hogan, December 2,
 1829.
 Joseph Borden, March 3, 1831.
 Rodney Earheart, May 22, 1832.
 Conway c. h. (changed to Marion).
 Silas T. Tancray, May 26, 1826.
 Harrisburg, discontinued May 22,
 1832.
 James Wand, April 12, 1830.

Lewisburgh.

Thomas Mathers, May 22, 1832.
 Nimrod Menefee, April 8, 1833.
 Joseph I. Simmons, August 30,
 1833.
 Peconery.
 George Bentley, November 21,
 1825.
 Nimrod Menefee, May 24, 1828.
 Point Remove (late Peconery).
 Frederick Fletcher, January 14,
 1831.

CRAWFORD COUNTY.

Burton's Mills.

John Logan, June 14, 1834.
 Inquire of secretary of state if
 this party was in senate. At
 his speaking gave out whiskey
 and water.

Cantonment Gibson.

John Nicks, February 21, 1827.
 R. S. Gibson, July 12, 1832.
 E. W. B. Nowland, November 8,
 1832.

Cotocton.

Ira Smoot, October 5, 1836.

Dardanelles.

Edward W. Duval, May 12, 1823.

Crawford c. h.

George Pickett, August 12, 1823.
 Gilbert Marshall, August 14, 1828.
 James Wilson, September 7, 1830.

John Gregg, March 8, 1832.

Crawford c. h. (changed to Pleasant Hill).

Alexander McLean, September 1,
 1832.

Fort Smith.

John Rogers, March 19, 1829.
 William Duval, October 27, 1829.
 Father of Ben Duval.

Lee's Creek.

Thomas Shannon, January 12,
 1832.Sanford N. Elmore, February 17,
 1835.

Masarid Creek, discontinued November 28, 1832.
 Edmund B. Bayse, December 22,
 1830.

McLean's Settlement.

Gilbert Marchel, October 13, 1826.
 McLean's Settlement (changed to Short Mountain, March 10, 1827).
 Mulberry, discontinued September 30, 1833.

Thomas Moore, May 18, 1830.

Ozark.
 William Hail, December 31, 1836.
 Pleasant Hill, discontinued November 28, 1832.

John C. Sumner, July 3, 1828.

Short Mountain.
 Gilbert Marshall, December 10,
 1827.

Thomas Hickson, December 19,
 1833.

William Hull, December 26, 1835.

Tekatoka.
 Edward W. Duval, March 6, 1828.
 Van Buren.

Thomas Phillips, March 7, 1831.

John Dunmore, December 3, 1836.

CRITTENDEN COUNTY.

- Buford's Landing.
Elijah Buford, April 1, 1836.
Bird B. Smith, September 30, 1836.
Canadian.
George C. Barfield, November 29, 1832.
Canadian, discontinued April 18, 1831.
Canadian, restored February 2, 1833.
Crittenden c. h.
Wm. D. Ferguson, March 24, 1826.
Crittenden c. h., changed to Greenock, August 8, 1827.
- Grande, changed later to Marion.
Arthur C. Welch, April 26, 1830.
Charles N. Blackmore, July 9, 1830.
Alexander Ferguson, May 2, 1830.
Joseph S. Neely, August 1, 1834.
Greenock.
William Ferguson, August 8, 1827.
Marion.
John Robertson, March 31, 1835.
Alexander I. Nobles, November 2, 1835.
James H. Wathen, March 29, 1836.
William Kerr, September 21, 1836.

GREENE COUNTY.

- County Line.
Wm. G. Arledge, November 11, 1833.
Eutaw.
Robert Polley, December 27, 1833.

- Greenfield.
Isaac Brookfield, October 3, 1834.
Daniel Martin, June 3, 1836.

HEMPSTEAD COUNTY.

- Conway.
James S. Conway, May 24, 1828.
Delaware Village, discontinued August 30, 1826.
James Byenside, March 7, 1826.
Hempstead.
John English, February 23, 1820.
James M. Stuart, July 3, 1822.
Allen M. Oakley, August 22, 1829.
Abraham Black, April 12, 1830.
James W. Judkins, July 13, 1830.

- Long Prairie, discontinued August 5, 1831.
Thomas Dillard, September 30, 1824.
Lost Prairie, discontinued September 30, 1833.
Jacob Buzzard, July 29, 1828.
Spring Hill.
Richard Pryor, February 14, 1835.
Washington.
Allen M. Oakley, September 5, 1828.

HOT SPRING COUNTY.

- Bayou de Roche.
Jedediah Millard, August 10, 1832.
Hot Springs.
Richard G. Hawkins, July 22, 1831.
Aaron N. Labian, January 5, 1833.
Hiram A. Whittington, May 21, 1833.

- Magnet Cove.
Alexander Rogers, October 30, 1832.
Warm Springs.
Alexander White, December 19, 1829.
Warun Dunham, March 19, 1830.
Richard C. Hawkins, May 2, 1831.
Warm Springs, changed to Hot Springs, July 22, 1831.

INDEPENDENCE COUNTY.

- Poke Creek, changed to Batesville, January 7, 1824.
 Charles Kelly, November 7, 1820.
 Batesville.
 Hartwell Boswell, May 22, 1824.
 Daniel Anthony, November 7, 1828.
 Charles H. Pelham, January 19, 1833.
 William L. McGuire, March 29, 1836.
- Oil Trough, discontinued April 30, 1829.
 Charles Kelly, February 18, 1829.
 Pleasant Island.
 John M. Childress, May 2, 1832.
 White Run, discontinued July 30, 1833.
 Peyton Tucker, April 26, 1832.
 Sulphur Rock.
 Thomas Tunstall, March 4, 1834.
 Austin A. Gibbons, August 10, 1835.

IZARD COUNTY.

- Izard e. h.
 Spencer Crouch, Mar. 8. 1826 (?).
 Jacob Wolf, October 12, 1826.
 Liberty.
 Charles Sneed, April 10, 1833.
 Philadelphia.
 John Falconer, February 22, 1819.
 Pine Bayou.
 John A. Allen, December 27, 1831.
- Robert Livingston, November 29, 1832.
 Asa McFelteh, November 22, 1834.
 Talbot's.
 Frederick Talbot, first date January 5, 1832; December 12, 1832.
 James A. Caldwell, December 6, 1833.

JEFFERSON COUNTY.

- New Gascony.
 Antoine Barraque, November 29, 1832.
- Pine Bluff.
 John W. Pullen, January 2, 1833.
 James T. Pullen, December 20, 1834.

LAFAYETTE COUNTY.

- Conway.
 James S. Conway, May 24, 1828.
 Thomas Quigg, November 8, 1832.
 Esma M. Lowe, November 25, 1836.
 Lafayette e. h.
 Jesse Douglass, July 29, 1828.
- William H. Conway, June 22, 1835.
 Lost Prairie.
 Benjamin P. Jett, February 8, 1834.
 Isaac N. Jones, August 4, 1835.

JACKSON COUNTY.

- Litchfield e. h.
 John C. Saylers, December 22, 1830.

LAWRENCE COUNTY.

- Columbia.
 William Jarrett, October 31, 1829.
 Crowley's.
 John Crowley, November 29, 1832.
 Benjamin Crowley, November 29, 1832.
- Crystal Spring, discontinued August 28, 1829.
 Wm. Russell, November 13, 1826.
 Reuben R. Russell, February 7, 1828.

- Davidsonville.
Henry Sanford, June 16, 1821.
Reuben Richardson, July 25, 1826.
Henry R. Hynson, December 29,
1829.
Robert Smith, Jr., March 27, 1829.
Davidsonville, changed to Jackson,
August 27, 1829.
Jackson.
Robert Smith, Jr., August 27, 1829.
William Black, March 1, 1832.
John Ficklin, May 18, 1832.
Hix's Ferry.
John Rodney, February 24, 1824.
- Jesse Ives, March 21, 1828.
Michael F. Taylor, June 29, 1830.
Peyton R. Pitman, November 29,
1832.
Fourche Dumas ("late Columbia").
William Jarrett, March 1, 1833.
James G. Russell, September 21,
1836.
"Fourche de Thoma," discontinued.
Peyton R. Pitman, May 6, 1820.
Strawberry River.
Peter Halderman, December 12,
1832.

LOVELEY COUNTY.

Nicksville, discontinued October 2,
1829.
John Dillard, April 25, 1828.

MILLER COUNTY.

Fort Towson, discontinued August
27, 1828.
Geo. C. Gooding, September 7,
1832.
William King, June 30, 1827.
John Thurston, May 24, 1828.
Miller c. h.
John H. Fowler, September 5,
1824.
Geo. F. Lanton, June 23, 1826.

John H. Fowler, January 14,
1826.
James Clark, December 10, 1830.
James D. Harding, March 10, 1834.
James W. Doss, February, 1835.
Travis G. Wright, October 28,
1835.
James H. Johnston, September 30,
1836.

MONROE COUNTY.

Jacob's Staff.
Joseph Jacobs, June 14, 1830.
Robert S. Bell, January 20, 1834.

Mouth of Cache.
John Maddox, November 4, 1828.
John Burris, June 17, 1833.
George W. Blakemore, August 24,
1835.

PHILLIPS COUNTY.

Big Creek.
James Hawks, November 8, 1830.
Helena.
William B. R. Horner, May 15,
1821.
George W. Ferebee, August 22,
1827.
Austin Kendrick, January 28,
1830.
Eli P. Lewis, November 24, 1831.
John Steele, January 6, 1834.
Samuel S. Smith, August 11, 1834.
William T. Joemans, August 10,
1835.

Hopefield.
William D. Ferguson, April 25,
1825.
Hopefield, removed to Crittenden
c. h., March 24, 1826.
Robert Ellis, April 23, 1828.
Lick Creek.
Peter Edwards, February 11, 1836.
Martin's.
Josiah S. McReill, March 1, 1833.
St. Francis.
William Strong, March 1, 1826.

PIKE COUNTY.

Zebulon.

Asa Thompson, May 29, 1834.

David Dickson, November 6, 1835.

POPE COUNTY.

Dardanelle.

Joseph Bearly, February 8, 1833.

Dwight.

Cephas Washburn, August 19, 1833.

Dwight, discontinued, March 10, 1830.

Dwight, re-established, August 21, 1830.

Aaron W. Lyon, August 21, 1830.

Robert Davidson, September 19, 1833.

Logan.

James Logan, February 11, 1832.

Noadiah Marsh, May 14, 1833.

Miles T. Scott, November 14, 1834.

Morrison's Bluff.

Arthur Clark, April 19, 1830.

Lorenzo N. Clark, November 20, 1830.

Alonzo C. Sadler, June 22, 1835.

Scotia.

Twitty Pace, May 26, 1830.

Alfred E. Pace, May 2, 1832.

Laban C. Howell, March 26, 1834.

Spadrie Bluff.

Elijah B. Alston, November 4, 1831.

Tekatoka.

Edward W. Duval, March 6, 1828.

Thomas Murray, Jr., June 9, 1832.

PULASKI COUNTY.

Bayou Metre.

Moses H. Blue, September 17, 1835.

Caldwalton (late New Kentucky).

Charles Caldwell, November 11, 1833.

Thos. R. Rutland, November 8, 1832.

Collegeville.

Ezra W. Owen, February 17, 1835.

Des Arc.

Lewis Kirkpatrick, June 8, 1831.

James Walker, November 11, 1833.

Dogwood Springs.

Ezra Owen, December 19, 1829; November 29, 1832.

Mount Prairie, discontinued July 27, 1830.

Edward Johnson, Jr., January 12, 1829.

New Kentucky, changed to Caldwilton.

Richard T. Banks, May 21, 1831.

Wm. Collins, March 1, 1832.

Little Rock.

Amos Wheeler, April 10, 1820.

Henry W. Conway, October 17, 1821.

Thomas W. Newton, August 25, 1823.

John T. Fulton, February 8, 1830.

William Field, December 28, 1831.

John T. Fulton, August 4, 1835.

Pine Bluff.

James Scull, January 25, 1828.

Saline Crossing.

William Locket, August 5, 1831.

Vaugine.

John Dodge, April 27, 1825.

SALINE COUNTY.

Benton c. h.

Green B. Hughes, May 2, 1836.

Collegeville.

Ezra M. Owen, February 17, 1835.

Alum Fork.

Valentine Brazile, July 14, 1836.

ST. FRANCIS COUNTY.

- Bay of St. Francis.
George W. Stokes, June 26, 1832.
Cool Spring.
Thomas Duval, March 25, 1833.
Fairview (late Bay of St. Francis).
George W. Stokes, December 15,
1832.
Languelle.
Archibald McDaniel, December
31, 1831.
St. Francis.
Wm. Strong, March 1, 1826.
- I. T. Foster, August 28, 1829.
Spencer Crouch, March 12, 1831.
Austin Kendrick, December 29,
1831.
Thos. Curl, December 1, 1832.
Isaac Mitchell, November 18, 1834.
Crow Creek.
Wm. Fulkerson, November 2, 1835.
Walnut Camp.
Charles Neely, March 25, 1835.

SEARCY COUNTY.

- Yellville.
Wm. Kavanaugh, September 13,
1836.

SEVIER COUNTY.

- Clark's Salt Works, discontinued
May 26, 1830.
James Clark, December 6, 1828.
Cesetot, discontinued January
8, 1834.
Asa Hartfield, September 13, 1828.
Little River Lick, changed to Ultima
Thule.
Wm. Chandler, December 6, 1828.
Benj. H. E. Hartfield, June 8,
1831.
Paraclifta.
John Clark, February 20, 1830.
Geo. Taaffe, May 21, 1832.
- H. G. McDonald, November 18,
1834.
Pine Woods.
Wm. Wright, December 19, 1833.
Ultima Thule.
Joseph McKean, December 9,
1833.
Walnut Prairie.
Benj. H. E. Hartfield, December
6, 1833.
Fort Towson.
Geo. C. Goading, September 7,
1832.

RANDOLPH COUNTY.

- Pocahontas.
Thomas O. Marr, April 21, 1836.

- Fourch Dumas.
James G. Russell, September 21,
1836.

UNION COUNTY.

- Black's.
Jonathan Black, March 1, 1832.
Cabeau (?).
Henry Clark, April 22, 1829.
John T. Cabeau (?), May 31,
1832.

- Charles L. Roffe, October 5, 1832.
James Waters, September 10, 1834.
Corea Fabre.
Benjamin Gooch, December 22,
1830.
Hiram Smith, November 29, 1832.

WASHINGTON COUNTY.

Cane Hill.	Mountain.
Bryan H. Smithson, October 13, 1829.	John Billingsly, December 11, 1833.
William B. Woody, June 8, 1830.	Richland Creek.
Philemon H. Troutt, December 27, 1833.	Thos. Smith, December 12, 1832.
Benj. Estill, August 10, 1835.	War Eagle.
Fayetteville.	Isaac Crow, December 15, 1832.
Larkin Newton, August 27, 1829.	John Buckhanon, December 12, 1835.
Bryan Smithson, October 29, 1833.	Vineyard.
A. M. Wilson, deputy.	Lewis Evans, February 21, 1829, first sheriff of Loveley County.
Washington c. h.	John Latta, December 28, 1833.
Larkin Newton, February 9, 1829.	
Washington c. h., changed to Fayetteville, August 27, 1829.	

VAN BUREN COUNTY.

Clinton.	
Russell Bates, December 20, 1833.	

Here is a list of post offices which are doubtful, *i. e.*, may be in another state. In some of the early books the same abbreviation (A. T.) is occasionally used for both Alabama and Arkansas territories, and in some cases reference and comparison with the atlas and postal guide does not settle the questions.

Fisher's Store, A. T.	Howard c. h., Mo. T.
George Fisher, October 10, 1818.	Alex. Lucas, July 1, 1817.
Discontinued, 1822.	(Probably in Missouri.)
(Probably Alabama.)	Lyme Creek, A. T.
Russell's Settlement, A. T.	(Blank), November 14, 1818.
"Same as Greensboro."	(Probably Alabama.)
Frederick Peck, February 3, 1819.	Brinlee, A. T., Clarke Co.
(There is a Greensboro in Alabama.)	Jacob Brinlee, February 14, 1832.
Mooresville, A. T.	Brinlee, discontinued, July 14, 1832.
Washington Keyes, January 21, 1819.	(No Brinlee nor Brinley in Alabama.)
(There is a Mooresville now in both these states.)	Davidson, A. T.
Marathon, A. T.	Adam Ritchey, June 28, 1817.
Lewis Dillahunty, February 3, 1819.	Richard Searcy, March 2, 1820.
(No such p. o. in either state.)	Davidson, Mo. T.
	Arch Ritchey, January 1, 1818.

OUR LIQUOR LICENSING SYSTEM.

BY WILLIAM A. FALCONER.¹

It may conduce to an orderly and comprehensive treatment to view the subject under the following heads:

(1) History of liquor legislation in Arkansas; (2) The constitutionality of liquor laws in general; (3) Our present laws and their construction.

1. HISTORY OF LIQUOR LEGISLATION IN ARKANSAS.

On October 24, 1820, by territorial act of that date, a law was passed providing a tax "on sawmills, tanyards and distilleries, in actual operation, a sum not exceeding \$1.00 on every \$100.00 of their valuation"—a classification which would indicate that our pioneer forefathers regarded as equally profitable, important and necessary those three subjects of manufacture, lumber, leather and liquor. The curious may find this act in the laws of Arkansas Territory, published in 1834, as section 9 of the chapter on revenues, under the marginal heading of "Stud-horses"—a heading doubtless suggestive and instructive in that day, but not so appropriate at this time, as would be the caption of "White mule."

It was provided by the same act that "each tavern license for a term of twelve months should be not less than \$10.00 nor more than \$50.00, to be fixed by the county court." By act

¹William A. Falconer's father's family came from Maryland. His grandfather reached Fort Smith in 1839. His mother (Fannie Armistead) came from Virginia. He was educated in the public schools of his native town, Charleston, Arkansas, at the University of Arkansas (Freshman Class), and at the University of Virginia (both academic and law courses). He was county and probate judge of Sebastian County from 1902 to 1908. In May, 1909, Governor Donaghey appointed him a member of the Arkansas railroad commission, and in January, 1910, he was elected chairman of the commission. He retired from the commission in January, 1911, and resumed the practice of law, being a member of the firm of Falconer, Youmans and Woods. Mr. Falconer married Miss Nannie Gilmore, daughter of Professor Gilmore of the law department of the University of Virginia.

of February 16, 1838, it was enacted that the annual fee for a dram-shop license should be not less than \$10.00 nor more than \$100.00, the amount to be determined by the county court. The law, as set out in the revised statutes published in 1838, remained unchanged in English's Digest issued in 1848, and no restrictions were made as to place, and no qualifications provided as to the character of the applicant.

So far the designation of tavern, dram-shop, doggery and grocery comprehends all the synonyms known to Arkansas legislation. But by the act of January 11, 1855, the politer and more elegant word "saloon" was borrowed from the French and, somewhat perverted from its original meaning, became in time the almost exclusive denomination of this place of refreshment and amusement. This act narrowed the heretofore unrestricted granting of liquor licenses by requiring every applicant to present to the county court a petition signed by a majority of the resident voters of the political township in which the grocery or saloon was to be established, but left the annual license tax as before, between \$10.00 and \$100.00. This act was amended by act of February 14, 1867, which, in addition to requiring a majority petition as before, left it to the discretion of the board of supervisors, then exercising the functions of the county court, to refuse any applicant "as they deem for the best interests and general welfare of the whole county."²²

This responsibility vested in the supervisors, no doubt, became wearisome to them and unsatisfactory to the people; hence, on May 30, 1874, "An act to regulate the licensing of dram-shops" was passed, which provided that an election should be held annually on Tuesday after the first Monday in November, in each township, in order to determine whether or not the supervisors might or might not issue "drinking saloon or dram-shop licenses," to sell liquors in quantities less than one quart. If a majority voted "For License," then "it should be lawful"

²²An act of March 25, 1871, imposed a tax of \$100.00 for county purposes on wholesale and retail liquor dealers. This was repeated in an act of April 28, 1873, and in addition a state tax of \$100.00 for the benefit of the sinking fund was imposed on wholesale and retail liquor dealers. The attitude of the legislators toward the liquor trade is reflected in a provision of this act which reads, "It being an occupation of no real use to society."—EDITOR.

to issue such licenses; if "Against License," then an absolute prohibition on the granting of licenses was given.

By act of January 23, 1875, "all dram-shops and drinking houses in any county, city, town or township shall be closed during the day of any election held therein, and the succeeding night."

By act of March 2, 1875, the original "Three-mile Law," it was provided that "wherever a majority of the adult residents of any township in any county shall petition the county court to prohibit the sale or giving away of spirituous liquors within three miles of any academy, institute of learning or university, located in their township or district * * * it shall thenceforth not be lawful to vend or give away any spirituous liquors aforesaid."

An act of March 8, 1879, laid the foundation of the liquor laws of the State as they exist today. Section 1 of this act required a license from the county court to be procured by any person desiring "to sell any ardent, vinous malt or fermented liquors or compounds or preparations thereof, commonly called tonics, bitters or medicated liquors, in any quantity or for any purpose," but providing that manufacturers might sell in original packages of five gallons and over without license. But by section 7 of this act no license could be granted in any township or ward unless at the preceding general election a majority of the voters declared for license. The applicant was required to be twenty-one years of age, but no moral qualifications were exacted. The license fee for the sale of intoxicants generally was fixed at \$200.00, one-half of which was for the use of the State and one-half for that of the county, and an additional county tax of not less than \$50.00 nor more than \$200.00, to be fixed by the county court. Dealers in malt liquors were required to pay a license fee of only \$100.00, one-half to the State and one-half to the county. The act of May 30, 1874, permitting dram-shops and the sale of liquors in quantities less than one quart was repealed, but persons holding dram-shop licenses issued under said act were allowed to continue until the first Tuesday after the first Monday in November, 1879. From that period until the 1st day of January, 1881, was a comparatively "dry time" in Arkansas. By act approved March

19, 1881, applicants for liquor licenses were required to be of "good moral character."

By act of March 21, 1881, the granting of licenses for the sale of vinous, spirituous or intoxicating liquors within three miles of any schoolhouse or churchhouse was prohibited for two years, upon a petition of a majority of the adult male and female inhabitants residing within three miles thereof, but it was expressly provided that the act should not apply to cities of the first and second class maintaining a regular police force. This act showed both retrogression and progression over the act of March 2, 1875, the original "Three-mile Law." The first made no exception in favor of cities, while the act of March 21, 1881, drew the three-mile radius without reference to county or township lines.

The act of March 26, 1883, included within the list of prohibited beverages, "alcohol," which by the decision in *State v. Martin* (34 Ark., p. 340) was held not to be "ardent or vinous spirits, or liquor of any kind, and that its sale was not prohibited under the act of March 8, 1879." By act of March 21, 1883, the "Three-mile Law" of March 21, 1881, was extended so as to include alcohol and to embrace cities of the first and second class, but was broadened so as to permit the sale of grape and berry wine by the manufacturers in sealed bottles of one quart or more.

On March 30, 1883, the "Blind Tiger" act was adopted.

By the general revenue act of March 31, 1883, the state tax on vendors of spirituous wines and malt liquors was raised to \$300.00 and the county tax to \$400.00, and the license was declared to be a personal privilege and made nontransferable.

In Mansfield's Digest, under the exigencies of an alphabetical arrangement, the chapter on "Liquors" immediately precedes that on "Lunatic Asylum," an arrangement some will declare to be logical as well.

By act of March 2, 1885, the sale of spirits or wine and the keeping the doors of any grocery or dram-shop open on Sunday so as to afford ingress or egress was made unlawful. By act of March 20, 1885, the county tax on liquor licenses was raised to \$500.00 and the state tax to \$200.00. By act of March 31, 1887, a state tax of \$50.00 and a county tax of

\$100.00 was levied upon wholesale dealers in malt liquors. Act of April 6, 1889 (amending section 1878 of Mansfield's Digest), prohibited the sale or gift of ardent, vinous, malt or fermented liquors to any minor without the written consent of his parent or guardian under a penalty of from \$50.00 to \$100.00.

On January 28, 1889, a joint resolution was adopted requesting congress to pass a law prohibiting the granting of revenue license in any locality in Arkansas where the sale of intoxicating liquors is prohibited by the laws of this State. On March 17, 1891, an act was approved making express companies and common carriers agents of the seller where they carry intoxicating liquors in C. O. D. packages and declaring the place of delivery the place of sale. By act of April 8, 1891, the county liquor license tax was fixed at \$500.00 and the state tax at \$300.00. By act of March 17, 1893, it was made unlawful for "any minor over the age of eighteen years to procure from any saloon, dram-shop or barrel-house keeper, or attache thereof, any spirituous vinous or malt liquors without first giving information to such person as to his minority, unless such minor have a written order for such purchase and providing a penalty of from \$25.00 to \$100.00," which act was repealed by act of April 11, 1901.

By act of March 16, 1895 (amending section 4887 of S. & H. Digest), the clandestine sale or giving away of intoxicating liquors was prohibited under penalty of from \$100.00 to \$500.00, excepting from its provisions the giving away of liquors or wines to friends upon one's "own resident premises." And by act of April 19, 1895, clubs and social organizations and members were prohibited from keeping at their halls or club rooms liquors for the use of the members thereof without procuring a license, and any member purchasing liquors there or drinking therein is liable to a fine of from \$50.00 to \$200.00. Act of February 13, 1899, was passed "to suppress the illegal sale of liquors and to destroy the same when found in prohibited districts," and making it the duty of chancellors, circuit judges, justices of the peace, mayors and police judges, on information or upon their own knowledge that liquors are kept for sale in such district, to issue a warrant to search for, seize and destroy the same. Act of May 8, 1899, prohibits the purchase for another of intoxicating liquors within a prohibited district.

By act of April 25, 1903, the county tax of \$500.00 previously levied for the benefit of the county was divided so as to apportion three-fifths, or \$300.00, to the county and two-fifths, or \$200.00, to the common schools in the county, except in certain counties exempted from the operation of the act. Act of April 3, 1905 (amending section 5108 of Kirby's Digest), act April 25, 1903, reduces the county tax to \$200.00, leaving the school tax \$200.00 and the state tax \$300.00 as before, exempting sixty counties from its operation. Whereas, act April 25, 1903, exempted fifty-nine counties and made the amount of county tax \$300.00.

Act April 1, 1907, makes it unlawful for any liquor dealer in any manner, through agents, circulars, posters or newspaper advertisements, to solicit orders of liquors in any territory in Arkansas where it is unlawful to grant licenses. Act May 26, 1907, makes every landlord guilty under the blind tiger act, who rents a house for a lawful purpose, which house is subsequently used in whole or in part for the illegal sale of liquor. A first conviction of the tenant is enough to forfeit the lease, and a second conviction is conclusive evidence of the guilt of the landlord. By act of June 3, 1907, county courts were prohibited from granting liquor licenses except within the limits of incorporated towns and cities where there is a mayor and a town or city marshal, or other body of police.

This historical summary of liquor legislation should be deeply gratifying to every true lover of his State. It shows a steady, healthy growth in public sentiment in restricting a traffic which has so little to its credit and so much to its shame. And yet it shows a true Anglo-Saxon conservatism, unmixed with bigotry and intolerance, with no spasmodic and fitful advances and retreats, no spectacular charges and inglorious routs, but with an ever forward movement, slow and sure.

It has not been so long since barrooms flourished at almost every cross-roads; since the people had no voice in saying whether saloons might or might not exist; since licenses might be issued to the most abandoned criminal, and when once issued could not be revoked; since the tax was as low as \$10.00 a year, and any man might sell at his own home without the payment of fee therefor; and since youths of the most tender years might

buy strong drink without restraint. It seems a far cry from that time to this when the issuance of a saloon license in the first instance depends upon the consent of a majority of the legal voters, both of the county and of the township or ward; when a county judge, however large the vote in favor of license in his county, may even then refuse to issue license; when the minimum tax has been raised from \$10.00 to \$800.00 per year; when any citizen has his day in court to oppose the issuance of a license to anyone not of good, moral character; when a license may be revoked upon proof of a sale to a minor, or of a sale upon Sunday or election day; or the violation of any law or reasonable regulation which a county court may impose; when the wide sweep of the three-mile law, set in motion by a majority of the adult men and women residing within three miles of any schoolhouse or churchhouse in city, town or county, may destroy every license within its reach, without return of any part of the license money paid, and prevent the existence of saloons within that radius for two years, and until by a majority petition saloons be reëstablished; when a petition against the saloon may be filed every day in the year, and one in their favor only once in two years.

REMINISCENCES OF INDEPENDENCE COUNTY.

BY ROBERT NEILL.¹

Independence County is situated in what may be designated as the northeastern division of the State. It is bounded on the north by Lawrence, Sharp and Izard counties; on the west by Izard and Stone; on the south by Cleburne and White, and on the east by Black River and Jackson County. It extends from township eleven north of the base line on the south to the middle of township fifteen on the north, and from range two west of the fifth principal meridian on the east to the middle of range eight on the west, and contains an area of about seven hundred and thirty square miles.

White River flows through the entire width of the county from the foot of Penter's Bluff in section nine, township fourteen north, range eight west, southeasterly, dividing the territory into two unequal parts, about three-fifths being on the north side of the river.

This river is navigable for fair-sized steamboats from Newport, Arkansas, to Batesville the year round, and in flush water to Buffalo Shoals, and to Forsyth, Missouri, where steamboats

¹Robert Neill was born in Independence County, Arkansas, November 12, 1838, and died at Batesville February 16, 1907. In 1860 he was elected surveyor of his county and in 1861 entered company K, first regiment Arkansas mounted riflemen, Col. T. J. Churchill commanding, as orderly sergeant. He was severely wounded in the battle at Oak Hills. He was promoted to a lieutenancy and commanded the company at Richmond, Kentucky, and at Murfreesboro, Tennessee. He was captured and passed the last fifteen months of the war as a prisoner in Fort Delaware. In 1866 he was elected clerk of the circuit court, later was licensed to practice law, and soon became known as a safe counsellor and successful advocate.

In 1874 he was appointed brigadier general of state militia and was conspicuous among the leaders of the people when the carpetbag government was overthrown. In 1892 and again in 1894 he was elected to congress from the sixth district of Arkansas. In 1899 he was appointed chairman of the Arkansas railroad commission on its creation and largely shaped its course.—EDITOR.

used to run often in the olden times, thus supplying southwest Missouri with salt, iron, etc.

The first record of a steamboat to reach Batesville was the *Waverly*, commanded by Captain Philip Pennywit. It arrived at Batesville in January, 1831, and found the river a good, navigable stream—also Black River. From thence forward steam-boats from New Orleans visited the town every year during the flush water season.

In 1899 congress embarked in the project previously recommended by corps of engineers of making the river permanently navigable to Buffalo Shoals, some eighty miles above Batesville, by means of locks and dams. Locks number one and two are completed; lock number three is well under way, and it is expected that lock number four will be begun during this year, the completion of which will give good slack water navigation for at least forty miles above Batesville.

The White River branch of the St. Louis, Iron Mountain and Southern railway running to Carthage, Missouri, traverses the county from Parequet Bluff on Black River, via Batesville, thence paralleling White River and running out of the county at Penter's Bluff. A branch of this road runs from Batesville to Cushman, eleven miles northwest, in the heart of the manganese region.

The earliest settlement of white people made within the present territory of Independence County, which can be verified, was by the Trimbles and Laffertys from Kentucky, in the fall of 1810, at the mouth of Poke Bayou, site of the present city of Batesville, though it is probable they found trappers and hunters already here. James Trimble, born in Bourbon County, Kentucky, and from his eleventh year reared in Livingston County, together with John L. Austin, Henderson S. and Lorenzo D. Lafferty, brothers, came over land from Kentucky, driving a herd of stock cattle, and stopped at or in the neighborhood of the mouth of Poke Bayou, where there were then vast cane brakes, affording fine winter pasturage.

In the spring of 1811 John Trimble, father of James Trimble, accompanied by a brother, Robert, one or two other brothers, their families and some other persons now unknown, left Kentucky on keel boats. They floated down the Ohio and the Mis-

sissippi rivers to the mouth of White River, which they ascended by means of rowing and poling, to the present site of Batesville, where they formed a settlement.

The Laffertys afterward removed further up White River beyond the present western border of the county, where in 1831 Lorenzo D. Lafferty located under the preëmption laws of the United States.

John L. Lafferty became a member of the constitutional convention of 1836. Henderson S. Lafferty was a preacher in the county, and solemnized marriages as early as 1827, and Austin Lafferty was a justice of the peace of the county in 1828, as appears from the county records. Lafferty's Creek, which empties into White River, took its name from these brothers.

The pioneer, James Trimble, above named, was married in the year 1815 to Miss Walker, daughter of John Walker, then residing in Lawrence County near the site of the present town of Smithville. The Walker family afterward removed to land in the present county of Izard. Of this marriage was born April 14, 1827, John Trimble, now residing on his White River farm in Baxter County, Arkansas, from whom, and from an autobiography by Lorenzo D. Lafferty, the foregoing historical facts, except those furnished by the records, were obtained.

Uncle John Trimble was a soldier in Captain Porter's company of Colonel Yell's regiment, Arkansas volunteers in the Mexican War, and was in the battle of Buena Vista; he was also a soldier in the Confederate army for three years, and in December, 1905, was in the enjoyment of perfect health and vigor, in a green old age.

At the date of the settlement of the above named pioneers at the mouth of Poke Bayou, and for many years afterward, the Cherokee Indians claimed and occupied the country on the southwest, to within a few miles of that point.

On the sectional map of Arkansas, copyrighted by Caleb Langtree, a draughtsman in the office of the surveyor general in 1849, the Cherokee line is delineated as beginning on the north bank of the Arkansas River about two sections above the then town of Lewisburg in Conway County, and running thence north fifty-three degrees east to the south bank of White River, about three or four sections above Batesville. This boundary

line is distinctly referred to and made one of the boundary lines of Independence County in the territorial act creating the county in 1820, as will be observed by the act hereinafter quoted.

The Indian title to the lands west of this line was extinguished, according to the best information of the writer, from a reading of chapter 108, U. S. Statutes at Large, act of congress approved May 24, 1828, by treaty with the Indians, ratified May 23, 1828. However this may be, it is certain that numerous Indians resided in that territory as late as 1832, as the writer of this sketch, in his boyhood has heard his father, who came to Batesville in 1832, say he had often seen troops of Indians in the then village of Batesville, offering for sale skins, peltries, beaded moccasins, etc.

The county seems to have settled up with considerable rapidity; by 1826, date of the earliest marriage record in the county clerk's office, there were numerous marriages. The first marriage of record was Robert Ivey to Lucinda Shadden, February 12, 1826; the second was David Canady to Polly Shadden, April 5, 1826; both marriage ceremonies were performed by Richard Peel, justice of the peace. Iveys and Shaddens of the above families yet reside in the territory, then within the bounds of Independence County.

The names Creswell, Graham, Johnson, Hagerton, Widenman, Blair, Davis, Perry, Sherrill, Henson, Spence, Turpin, Cobb, Harris, Gilbreath, Boyd, Russell, Masters, Robbins, Reeves, Allen, Jones, Staton, Palmer, Guest, Martin, Fulbright, Barnett, Weldon and Bradley appear by 1830.

There were settlements made in other parts of the county sometime after the settlement at the mouth of Poke Bayou, afterward Batesville, was made. John Miller entered lands in sections 2 and 3, township 13 north, range 6 west, some two and one-half miles northeast of Batesville, and probably had resided there some years before he purchased the land from the United States on August 22, 1822. Colonel Miller resided on these lands until the year of his death, 1886, when he was about ninety-six years old. He was a man of strong and marked individuality, accumulated quite a fortune, which was mostly destroyed by the vicissitudes of the war between the states. A Virginian, he went to Tennessee and ran on keel boats on the

Tennessee and Cumberland rivers before coming to Arkansas. He reared rather a large family, and his oldest son, William R. Miller, was governor of Arkansas from 1877 to 1881. Another son, Maj. John Miller, a large and successful farmer, is yet living on Spring River in Randolph County, near the town of Imboden, in Lawrence County. Colonel Miller had lived in Lawrence County several years before he came to Independence County. He frequently indulged in reminiscences of the early territorial days. One of his tales is recalled as follows:

The scene was at a religious camp meeting in Lawrence County, at which there was a great revival and much enthusiasm and emotion. One fellow had been under conviction for some hours in the congregation, when suddenly he sprang up with a yell, and ran from under the bush arbor, where the services were held, to a neighboring sapling, which he climbed up some fifteen or twenty feet and immediately descended, shouting as he came down, and as he reached the ground, cried out: "I have got religion; Oh, I've got it. I got it when I was up in the tree, and it smelt just like burnt shucks!"

Colonel Miller's wife was Miss Clara Moore, who died some thirteen years before he did; her family settled upon the lands now known as the Gainer place and the Wyatt place on White River, embracing the present site of the Gainer or Duffey Ferry, and the mouth of Greenbrier Creek, three miles above Batesville, and in September, 1822, entered these lands at the government land office. The Moore family was large, and they were intelligent and well-to-do people; of the men there were James, Robert, Thomas and William, and of the women there were at least four, Mrs. Clara Miller and Mariah, wife of Judge Townsend Dickinson, and ——, wife of Thomas Curran, the second clerk of the court of the county, and Polly Ann, wife of Richard Sanders, who was killed at the battle of Buena Vista, where he was color bearer in Captain Porter's company from Izard and Independence counties in Colonel Yell's regiment, Arkansas cavalry.

Maj. William Moore was clerk of the courts of Independence County in the thirties; he was well known to the writer in his boyhood. Major Moore, when nearly eighty years old, migrated over land with his grown sons and daughters and sons-in-law

to California in 1853, where he resided until nearly one hundred years of age. Webb Hayden, John Simpson and Wiley Dunn in 1827 entered and settled what is now known as the Andrew Allen farm, some two miles below Ramsey's Ferry, on White River. Richard Peel and Thomas Peel, brothers, entered on July 17, 1828, the northeast quarter of section 26, township 13 north, range 7 west, situated on Greenbrier Creek. This land is now owned by our townsman, Winslow Evans. Settlements were also made in Oil Trough bottom on the south side of White River at least as early as 1817. We find land entries by Charles Kelley, Mary Kelley, William Reed, Townsend Dickinson, William Dudley, James Miller and John Safford in 1822 and 1825.

Hardin Hulsey and his wife, Nancy (nee Smalley), settled in Oil Trough bottom in 1817 and reared rather a large family of sons and daughters. Hulsey had been a soldier in the war of 1812, and located his bounty land warrant on the northeast quarter of section 25, township 12 north, range 5 west, upon which he builded an elegant home, where he resided until his death in 1867. He was a man of strong, sterling character, and accumulated a fair fortune for the times. Uneducated himself, he gave to all his children the very best educational advantages which the county afforded. A number of the descendants of this worthy couple yet reside in the county.

In Big bottom, on the north side of White River, land entries were made by Morgan Magness and Perry Magness in 1826, and by Beniah Bateman in 1829; these men were actual settlers, and some of their descendants now reside in the county. Of the original settlers in Big bottom, Colonel Morgan Magness was the most popular. He was a robust man physically and mentally, of gigantic frame, and a native of North Carolina. He served several terms in the Arkansas legislature and was the wealthiest man in the county at the beginning of the war, which freed upward of fifty negroes for him and wasted his live stock, but left him a comfortable fortune in rich bottom lands. The Magness family was very large in the thirties, forties and fifties, and there are yet many of the younger generation living in the eastern part of the county in and around the town of Newark.

David G. W. Magness, father of W. Tom Magness, now

of Newark, was a nephew of Morgan Magness, and was also a leading man in his day, a member of the legislature of 1866-67.

Nancy Magness, a sister of D. G. W. Magness, married Newton Arnold and was the mother of ex-County Judge M. L. Arnold. Another sister became the wife of Capt. Thomas T. Tunstall, a steamboat captain, planter and patron of the race course, who reared a large family of sons and daughters, one of whom is Mrs. James Archer of Mammoth Spring, and another is ex-Sheriff D. P. Tunstall of Salem, Fulton County, Arkansas.

James Trimble, a brother of John Trimble, the keel boat pioneer from Kentucky, was an early settled in Greenbrier township, some six miles southwest from Batesville; he was a deputy United States land surveyor in 1821 in the county, and was the father of the late Jackson Trimble, who died some years ago in Sulphur Rock, Arkansas.

The Carter family from Virginia was also in the county from the early thirties; one of them, Thomas S. Carter, married Harriet Trimble, learned land surveying from his father-in-law, James Trimble, and was afterward county surveyor for many years. He left numerous descendants at his death in 1872, some of whom yet reside in the county.

Beniah Bateman of Big bottom was also a man of prominence, serving several terms in the territorial and state legislature.

The Tomlinson family were also very early settlers in Big bottom; one of them, "Uncle John," aged seventy-nine years, resides in the town of Newark, of which he was the founder. His father, Hugh Tomlinson, came to the county in 1827. Judge John Morgan, the father of Col. Thomas J. Morgan, settled in Greenbrier township in 1827. Col. T. J. Morgan, a soldier of the Mexican War, and afterward a gallant Confederate colonel, died in August, 1906, full of years and of honors. There were doubtless other portions of the territory of the original county settled by white people between 1820 and 1830.

The county was formed by act of the territorial legislature October 20, 1820, and embraced an area equal to that of half dozen counties at the present time: the act is as follows:

"All that portion of the county of Lawrence bounded as follows, to-wit: Beginning at a point in Big Black river half-way between the mouth of Strawberry and Bayou Cure, and running from thence a direct

line to the point of the dividing ridge between Strawberry river and Bayou Cure, thence along the dividing ridge aforesaid to the headwaters of Bayou Cure aforesaid, then along the dividing ridge between Strawberry river and White river to the northern line of the territory, then with said boundary line west to the southwest bank of the main branch of White river, then down said river to the northwest corner of the Cherokee claim, then southwestwardly with said claim to Little Red river, then down the same to its mouth, then along the northern boundary of the county of Arkansas to a point southeast of the beginning, then a direct line to the beginning, to be laid off and erected into a separate and distinct county, to be called and known by the name of Independence county.”

The town of Batesville was made the county seat some time prior to November 19, 1821, as on that date a term of the court of common pleas for the county of Independence was begun and held at the town of Batesville by Richard Peel and William Moore, Esquires, as shown by the record of that day's proceedings as follows:

“At a court of common pleas, begun and held at the town of Batesville in and for the County of Independence on Monday, the 9th day of November, A. D. one thousand eight hundred and twenty-one, were present the Hon. Richard Peel and William Moore, Esqs., judges of our said court.

“When Charles Kelley, Esq., sheriff of the said county, returned into court a panel of grand jurors to serve for the body of said county, to-wit: John B. Craig, foreman; Samuel L. Hudson, Asher Bagley, Joseph Taylor, Edward Taylor, Alferd Sherrill, Henry Morris, John Saffeld, Benjamin Hardin, Abraham Wyatt, William Smith, Michael Yokum, Abraham Ruddell, Sr., Jesse Langston, Kelley Hulsey, William Johnson, Joab Hardin, Thomas Cornwell, Thomas C. St. Clair, nineteen good and lawful men duly elected, sworn and charged, retired to consider of their duties.”

A petit jury empaneled on the same day to try the case of Edward Sullins against Arnold Schlasinger was composed of the following named citizens, to-wit: William G. Shannon, Peter Tidwell, David Magness, George Gill, Daniel McNeel, Morgan Magness, Thomas Peel, Nicholas Trammil, David Tidwell, John Kyler, Robert Caldwell and James Fisher.

Abraham Ruddell, Senior, above named, and his brother George, with their families from Kentucky, reached the mouth of Poke Bayou in 1814; also the Caldwell family, with whom the younger Ruddells intermarried. Abraham Ruddell, Senior, at the age of five years, and another brother, Stephen, aged seven years, were stolen by Indians (said to be the Delawares) in Kentucky and held in captivity until they were grown men, when they separately made their escape and made their way back to Kentucky.

John Ruddell, a son of George Ruddell, and nephew of Abraham Ruddell, Senior, married a Caldwell; their eldest child, Sarah, was born March 12, 1820, at the mouth of Poke Bayou; she is now the widow of Alexander Williams, deceased, a Confederate soldier in company K, first Arkansas mounted riflemen, resides a half mile west of Batesville, in good health, and fair mental vigor.

From Mrs. Williams the above history of the Ruddell and Caldwell families was obtained. John Ruddell died in 1867. His youngest son, William B. Ruddell, Esquire, resides on the paternal plantation of White River bottoms, a mile west of Batesville. Mrs. Elbert L. Watson and Col. Frank Caldwell of Newport, Arkansas, are descendants of the pioneer Caldwells of Independence County.

There are Craigs, Hulseys, Saffolds and Gills, descendants of the original pioneers, yet living in the county. John Kyler, an early citizen of Caney Creek, now in Salado township, was a very intelligent man, fairly well educated for those days, and afterward served as county and probate judge for a number of years. He left several sons at his death, but none are now living. At the term of court above mentioned James Ivey was licensed to keep a ferry across Little Red River at his residence, on the payment of \$1.50 license tax. At the same term the following petit jury was also impaneled: Thomas Peel, James Black, James Trimble, William Shannon, Peyton Tucker, James D. Gibbins, James Aikins, Abraham Ruddell, William Dudley, William Linn, John Palmer, Thomas Curran. Jeheida Jeffery was appointed to lay out the road divisions of White River township, and made a report. George Ruddell, who had been appointed to lay out the road divisions of Ruddell township, made report of the hands to work the new road leading from Batesville to Rocky Bayou, and Alferd Sherrill was appointed overseer of the same road. Rocky Bayou is fully thirty miles from Batesville.

Thomas Cornwell, Samuel Elms and John Jones were appointed commissioners to view a road from Batesville to intersect the lower road near Ivey's Ferry on Little Red River, a distance of not less than thirty-five miles. Cornwell and Elms were residents of Greenbrier township, on the south side of

White River, where a number of the Elms family now reside. The Cornwell family, of whom there were originally three brothers, Thomas, Jerry and Silas, have all disappeared by death and removal from this part of the country.

Judge Richard Peel left a large family of sons and daughters, all of them fully grown except one; he died about 1844. Samuel W. Peel of Bentonville, Arkansas, ten years a member of congress, and Mesdames Elizabeth and Eliza J. Mayfield, wives of Messrs. Mayfield, late of Greenbrier township, are grandchildren.

The town of Batesville appears to have been partially laid out and surveyed as early as May 23, 1821; Richard Searcy, Thomas Curran and Joseph Hardin conveyed to Mark Bean lot 2, town of Batesville, by deed of that date. The grantors above named on the 3d of March, 1822, executed and recorded a bill of assurances and a plat of the town, as then laid out, extending from block 1 at the foot of Main street to Spring street, being the street running just above the Batesville Bank building, and thence to the bridge across Poke Bayou.

Several additions have been made to the town from time to time. The area embraced in the county at its formation was largely reduced when Jackson, Van Buren and Izard counties were formed, and further reduced when Sharp, Stone and Cleburne counties were made.

Among the pioneer settlers there were many able men in their several walks in life; probably the most prominent in his day was Townsend Dickinson, from New York state, long time an eminent practitioner of the law, and later one of the associate justices of the supreme court of the State. Judge Dickinson was at one time rather wealthy for that period, but after his retirement from the supreme bench became embarrassed financially through mercantile business, and finally removed to Texas, where he was accidentally drowned near the present city of Jefferson. Judge Richard Searcy, the first clerk of the courts of the county, and afterward territorial judge from 1823 to 1825, was also a distinguished citizen of Batesville. He was a bachelor, but at his death in 1832 left a number of collateral kinsmen of his name, to whom he bequeathed a considerable fortune; a grand nephew of Judge Searcy, Richard Searcy, now resides in Greenbrier township.

John Ringgold, from Baltimore, Maryland, was one of the early merchants of Batesville. He was a well-educated, courtly gentleman, of commanding stature and presence; was a member of the constitutional convention of 1836 and afterward a state senator. He married and reared a family of daughters.

Col. Charles Fenton Mercer Noland, from Loudoun County, Virginia, who came to the county about 1828 or 1829, married Colonel Ringgold's eldest daughter. Colonel Noland was for many years very prominent in Arkansas; he was an editor, a lawyer and a humorous writer, under the *nom de plume* of "Pete Whetstone." He was a correspondent of the old *New York Spirit of the Times*, a sporting paper of high rank in its day. He was several times a member of the legislature. He removed to Little Rock about 1854 and died there a year or two before the late war between the states.

Uriah Maxfield with his wife, Leah, whose mother (nee Wise) was a relative of Henry A. Wise of Virginia, came to Batesville from Baltimore, Maryland, in 1841. They reared a large family of sons and daughters to maturity—only five of them are now living. Mr. Maxfield was a fine shoe and boot maker, and established a factory which drew customers for fine work from many counties. He later entered the mercantile business and died in 1868. Mrs. Maxfield survived him many years. Theodore Maxfield, the head of Theodore Maxfield Banking and Trust Company, is the oldest surviving member of the family.

Of the pioneer preachers, there was Burwel Lee, a Methodist minister for fifty years. He died in Batesville in 1877. A tablet to his memory adorns the wall of the First Methodist Church in the city. He was presiding elder as early as 1836, and married Dr. Trent C. Aikin to Miss Jane Bean in August of that year.

John Milligan of the Cumberland Presbyterian Church dates as early as 1831. George Gill was a Baptist of the Spring River Association in 1833. Ansil Weber, a Methodist, was in the county as early as 1837, and Henry Estabrook of the same church in 1841. Dr. Andrew Hunter of the Methodist church was received as a preacher at a conference held in Batesville in 1835; and in a few years came back as presiding elder of the

district, and became a man of statewide reputation. The writer has seen and known all of these "Fathers in Israel."

Hartwell Boswell and James Boswell of Kentucky were settlers in and near Batesville about 1820. Col. H. Boswell was the stepfather of Miss Margaret Desha and of Franklin W. Desha; the latter succeeded Captain Porter as captain in Yell's regiment, and in the Confederate army was lieutenant colonel commanding a battalion. His wife was Elizabeth Searcy, a niece of Judge Richard Searcy. One son and two daughters survive them and reside on their fine plantation two miles south of Batesville. Miss Margaret Desha married first William F. Denton, a prominent young lawyer, who died in 1844 or 1845. She later married Judge Beaufort H. Neely, who died in 1858. Mrs. Neely survived many years, beloved by many friends and survived by several children, none of whom now reside in this county.

Any history of Independence County would be incomplete without mention of Charles H. Pelham. He was in the county as a deputy United States land surveyor as early as 1825, was clerk of the courts from 1832 to 1836 and again in the forties. He was a state senator from 1844 to 1846, and in 1846 was captain of a company in Colonel Gray's battalion, United States volunteer cavalry, and stationed on the Indian frontier at old Fort Wayne. He was then well to do financially, but later in life became poor, and died a broken old man. No descendants survive him in this county.

Judge David W. Lowe was in the county in the early thirties. He was also a land surveyor, was deputy clerk under Pelham, and afterward clerk of the courts two terms and county and probate judge three terms. He resided for many years on his farm near the present village of Moorefield, but in 1856 removed to Batesville again to take charge of the "Soulesbury Male and Female Institute," an academy of high repute in its day. He died in 1857, and was a man universally respected. One son and other descendants survive him, residing in the county.

John Miniken and his wife came to Batesville prior to 1840 from Washington County, Pennsylvania. They reared a considerable family of sons and daughters; the sons are all dead.

Miss Helen, a daughter, resides in Batesville, also two grandsons. Judge Miniken was a merchant, was justice of the peace, and judge of county and probate court, and a state senator. He was a man of fine presence, and an intimate friend of Capt. A. R. Porter, with whom the writer saw him play backgammon sixty years ago.

John L. Craig, then an itinerant preacher, in 1833 married Miss Margaret Hardin, sister-in-law to Reverend Josephus Cornwall, hereafter mentioned, and settled in Greenbrier township on lands now owned and resided upon by his son, Judge Andrew Craig, near Jamestown.

Peter Engles and wife, Hester, from Kentucky, with a large family settled in the twenties on what is now known as the Burr place, just below Ramsey's Ferry, a mile and a half below Batesville. One son, Henry A. Engles, was sheriff of the county from 1836 to 1840. Another, William D. Engles, married Margaret, a daughter of Job Stark, and was the father of the wives of Judge Andrew J. and Josephus H. Craig. "Grandma" Engles lived to an extreme old age and left many descendants, one of whom is Capt. Charles Engles of Salado village, a long-time steamboat captain.

James Bagley and his brother, Asher Bagley, of the first grand jury, were young men from New York State, and were in the county as early as 1821, and most likely some years earlier.

James Bagley married Miss Frances French of the county and settled on a fine farm in Greenbrier township as early as 1833, where they reared an extraordinarily large family of sons and daughters. Mrs. Bagley was, by her own account, the mother of nineteen children born alive; she died in the summer of 1853, Mr. Bagley in the fall of 1856. One daughter, Mrs. Elizabeth Luster, and numerous grandchildren of this pioneer couple reside in the county, and one son, Chapman Bagley, resides in Oregon.

In the spring of 1840, John Baker and his wife, Caroline (nee Beeler), to whom he was married in 1836, reached Greenbrier township from east Tennessee. He was considered one of the best farmers in Independence County. This couple reared a family of several sons and one daughter, now Mrs. Jane Sims of Jamestown. Mr. Baker died several years since.

In the thirties three brothers, William L., Elam and Edwin H. McGuire, came to Independence County from North Carolina. William L. settled in Batesville and in 1837 married Mary Jane Searcy, a niece of Judge Richard Searcy. He was sheriff of the county several terms, a man of fine presence and had many friends. He died on his plantation in Greenbrier township in 1856. Two granddaughters, Mrs. Monnie Maxfield and Mrs. Addie Crow of Batesville, and one daughter, Mrs. Richard Searcy of Desha, and one son in Texas survive him.

Edwin R. McGuire was a man of splendid physique, vigorous, intelligent and of undaunted courage. He married, in 1838, Miss Emeline Craig of Oil Trough bottom, and resided there on his large and valuable plantation until about 1854. He incurred the enmity of a gang of ruffians, who burned his residence and severely wounded him, but not until he had shot two of their number dead. He died in Batesville in 1881. The third brother, Elam, served as postmaster at Batesville for many years and was a druggist, dying on his farm near town. Several sons and a daughter survive him.

George Case with his wife, Sarah (nee Ridgeway), emigrated from Illinois to Batesville about 1840, where they reared a large family of sons and daughters, several of whom are living in the county, among them Dr. Joseph W. Case. Case was originally from Mansfield, Ohio, where he was personally acquainted with S. R. Curtis, afterward a major general in the United States army, whose forces occupied Batesville from May to July, 1862. During General Curtis' stay Mr. Case, by reason of his knowledge of the people of the country and his friendly relations with General Curtis, secured many favors and fair treatment to the noncombatant population.

Abial Chaney and Jacob Six, father of Esquire James W. Six, now of Batesville, were early settlers on Caney Creek in Greenbrier township, and were neighbors of Judge John Morgan. No descendants of Chaney are known to reside in the county.

Maj. Lewis T. Waugh from Virginia, a brother of the eminent Bishop Waugh of the Methodist Episcopal Church, with his family of sons and one daughter and negro servants, reached Independence County as early as 1831, as shown by

the county records, probably a year or two before, and settled eleven miles northwest of Batesville in a fertile and lovely territory which became known as the "Waugh barrens." The major died in the fifties. His daughter in the thirties married Robert A. Childress, who, with his father, John W. Childress, and family, settled in the county about the time or soon after Major Waugh did. Descendants of Major Waugh and of Robert A. Childress, of their names, are residing in the county.

Benoni Stafford was an early settler on the Batesville and Clinton road, some twenty-five miles southwest of Batesville, and opened a small farm, a part of the farm now occupied by Howell L. Ward in Cleburne County.

The "Stafford stand," as it was called fifty-five years ago, was for a time the only habitation between the Greenbrier Valley and Little Red River, and the only stopping place for travelers on that route. Stafford, who has been dead for more than half a century, left several sons, but none of his descendants are known to be living in this county now.

The town of Batesville was named for Judge James Woodson Bates, one of the territorial judges, who often held the courts at Batesville, brother of Hon. Edward Bates of St. Louis, Missouri, President Lincoln's first attorney general. In this connection it may be remarked that the early bar of Batesville furnished several eminent men; besides Dickinson and Searey, there came later Judge Thomas Johnson, judge of the third circuit and afterward chief justice of the supreme court; Judge William Byers, James H. Patterson, James S. Curran, who afterward removed to Little Rock and died there; Hulbert F. Fairchild, chancellor, and from 1859 to 1864 a judge of the supreme court; John H. Byers, prosecuting attorney of the third judicial circuit, and Judge U. M. Rose of Little Rock; also Andrew Porter from North Carolina, who in 1846 resigned the office of prosecuting attorney to command a company of volunteers in Colonel Yell's regiment. Both Porter and Yell laid down their lives at Buena Vista in February, 1847.

The circuit courts of the county were also attended regularly by Absolom Fowler of Little Rock, one of the most eminent lawyers of the State, and David Walker of Fayetteville, afterward a member of the supreme court. The writer has often

seen Colonel Fowler in Batesville and has heard him in court. He always dressed elegantly in black, wore a tall silk hat, was reserved and rather haughty, and a terror to his adversaries. The county has furnished three governors of the State, Thomas S. Drew, from 1844 to 1849; Elisha Baxter, from 1873 to November, 1874, and William R. Miller, heretofore mentioned, all of whom were residents of Batesville.

Among the early merchants may also be mentioned Edwin T. Burr, born and reared to manhood in Massachusetts. He left Boston in the late thirties as supercargo of a merchant vessel which voyaged to Spain. Returning to the United States via New Orleans, he found his way to Batesville, Arkansas, located, and soon afterward married a Batesville girl, Miss Nancy Burton, who recently died in St. Louis at an advanced age. Mr. Burr died at his country home, "Ingleside," now the residence of Charles N. Ferrell, on White River, one and a half miles below Batesville, in November, 1876. He was in many respects a remarkable man, of good education, of the most suave manner, and with rare conversational powers. He built up a mercantile business, which for the time was immense. Aaron W. Lyon from New Jersey, and for many years a partner of Colonel Ringgold, was an early settler; when upwards of eighty years of age he, in 1882, removed with his family to California and lived until upwards of ninety years of age.

A noted character in the early days of Batesville was Robert Bates, for many years the only "mine host" of the town, and Bates' tavern on the site of the McDearmon house, opposite the residence of Mrs. Sophia Lawrence on lower Main street, was known all over north Arkansas. Uncle Bobbie, as he was called by his troops of friends, was an Irishman by birth and rearing, and had the traits characteristic of many of his countrymen, wit, humor and a fondness for good grog.

Henry R. Hynson, the father of Mrs. Lawrence, just mentioned, and of Mrs. James Rutherford, and William S. Hynson, his brother, were also pioneers of Batesville, coming here with or soon after Colonel Ringgold, to whom they were related. The O'Neals, Iveys and Hesses were pioneers along White River in what is now the lower end of Stone County, and the upper part of Independence, in the neighborhood of O'Neal station

and on the White River railroad and the village of Marcella in Stone County. Their descendants yet reside in those neighborhoods.

The Bean family were prominent people. Capt. Jesse Bean commanded a company of Arkansas rangers in the United States service from Independence County in 1834-35, and was sent on an expedition in the year 1835 through the Indian country. Captain Bean and his company were made somewhat famous by Washington Irving in his book, "A Tour of the Prairies." The great author accompanied Captain Bean from Fort Gibson and thence on his return to Fort Smith, Arkansas. In Captain Bean's company was a stalwart young fellow named James Meacham from this county, the grandfather of A. G. and J. B. Gray of Hickory Valley. Meacham was the young ranger who caught the black mare in "The Wild Horse Hunt," so graphically described in Irving's narrative. The Meacham family were early settlers and numerous; only one of the original family now survives, Thornbury A., commonly called Bob Meacham, of Hickory Valley. James Meacham, the ranger, was a man of extraordinary strength and activity, and was not averse to a "knock down, fist fight," if insulted. While in the United States service under Captain Bean, for some infraction of orders he was placed on extra duty in camp, and as a punishment was hitched to and made to draw a cart. Tiring of this, he swore he was a horse, and liable to get scared. He did get scared and ran away with the cart, smashing it up. When he was somewhat advanced in years and rather past the fighting age, he told the writer of this, that in his younger days he called his right fist his forefoot, and, he added, "egad, whenever I kicked a fellow with this forefoot, he was sure to fall down."

Dr. Patrick Burton settled in the county in the thirties; he was an educated physician and a Virginian. He was the father of Mrs. Nancy Burr, mentioned heretofore, and of Mrs. William S. Hynson, and of the late Mrs. Judge William Byers of Batesville, and of two or three sons. Dr. Burton was a man of great force of character; in fact, was inclined to be autocratic and self-assertive. He on one occasion pulled the nose of an elderly Methodist preacher named Estabrook, on the streets of Batesville, the preacher's offense being that a short time before

he had publicly, from the pulpit, at a camp meeting in the country, reproved some young ladies whom Dr. Burton, then a widower, had escorted to the meeting. A male member of the church in that neighborhood, which was in Greenbrier township had a good deal to say about the Burton-Estabrook nose pulling, and Dr. Burton, meeting him on Main street in Batesville at the corner of Main and Spring, proceeded to give the Greenbrier friend of the preacher a cudgeling over the head and shoulders with his walking cane. The writer's father witnessed this episode.

Capt. Jesse Bean's wife was a sister to Col. John Miller, mentioned some pages back; they had only one child, a daughter named Jane, a very handsome woman, who in 1836 married a young physician lately come into the country, Dr. Trent C. Aikin. After this marriage Dr. Aikin resided at the home of Captain Bean on what is now known as the Mark Wycough farm, formerly known as the Fairchild place on Poke Bayou, some three miles from Batesville, where there is now a one-story brick dwelling, some sixty or seventy years old. Drs. Aikin and Burton became involved in a feud growing out of professional matters, which became very bitter, especially on the part of Dr. Burton. A young son of Dr. Burton named Nicholas was assassinated by being shot from ambush on the roadside in the neighborhood of Dr. Aikin's residence. A citizen of the county named Allen was riding by the side of young Burton, who was only a youth. Allen heard the gun fire and saw young Burton fall from his horse, but did not remain to see anything further, and came to Batesville under whip. Dr. Burton and his family and friends charged Dr. Aikin with the shooting. Aikin was arrested, but was not indicted, and he soon afterward removed from the county to Mississippi, and Dr. Burton removed to Little Rock. Meanwhile Phillip Burton, another son of Dr. Burton, grew to manhood and resided in Batesville, and in 1849 or 1850 Dr. Aikin moved back to Independence County and located on Major Moore's farm, now the Gainer place, on White River. A few weeks after his return he and his wife were riding on horseback up Main street in Batesville, on their way out to visit the family of Colonel Miller, who was Mrs. Aikin's uncle. Aikin had a fine rifle across his saddle, which

he always carried, when he left home. As Aikin and wife approached a point in front of Burr's store, now what is called the old Reed building, Phil Burton was standing on the store porch, wearing a cloak worn by gentlemen in those days, under which he had a double-barreled shotgun. As Aikin approached the two men saw each other; Burton threw off his cloak and Aikin seized his gun in both hands and began to elevate the muzzle. The result was, Burton shot Aikin from his horse, wounding him so that he died in a few months. Burton was indicted for murder, tried in Batesville and acquitted on the plea of self-defense, and thus ended a chapter of blood and the feud between the Burtons and Aikins.

Dr. Daniel J. Chapman was an early settler, and married the widow of John Redmon in Batesville. He was an accomplished physician, as well as a fine violinist, a genial gentlemen and prominent in local polities, serving two terms in the state senate. He died on his farm in Oil Trough bottom in 1858. His widow and children emigrated to California overland in 1859. Drs. John F. Allen and William M. Lawrence both came to Batesville about 1847 or 1848, and were both natives of Missouri, well-educated physicians, and for many years partners in their profession, and always friends. Dr. Lawrence was a surgeon in the Confederate army from May, 1861, until the surrender of Gen. Kirby Smith in 1865. He was assistant surgeon of Colonel Churchill's regiment Arkansas mounted riflemen at the battle of Oak Hills, Missouri, August 10, 1861, was afterward on a board of examining surgeons for the trans-Mississippi department until the surrender, and rendered field service at the battles of Mansfield and Pleasant Hill, Louisiana, under Gen. Richard Taylor. He died at his home in 1892. Dr. Allen lived until the summer of 1902. Mention has been made of Uncle John Simpson, who was somewhat of a character. He was rather wealthy, of a social disposition, fond of his dram, which he took liberally when he came to town. On one occasion when circuit court was in session, Uncle John was impaneled on a petit jury to try a civil case in which the bank of the State of Arkansas was the plaintiff and an old citizen of the county named Fergus Morrison, commonly called "Foggy" Morrison, was the defendant. The case was strongly contested,

and the jury were given the case on one afternoon, and, failing to agree, were released by the court until the next morning. That night Uncle John was around with his friends, with whom he encountered stout John Barleycorn. The next morning the jury filed into court and announced to the court that they had not yet agreed on a verdict. Uncle John was of the number; his face was red as a beet, his somewhat bushy hair standing out "seven ways for Sunday," he was beginning to get tired of the confinement, and not in a good humor with his fellow-jurors besides. Before retiring from the court room he turned and addressed the judge: "Jedge, there's eleven d—— contrary men on this jury, and 'Foggy' Morrison is an honest man." This story is authentic. Simpson died in 1856, leaving no descendants. William Ramsey settled at Ramsey's Ferry as early as 1822, and in connection with Charles Kelley, who was then and afterward sheriff of the county, entered a part of the lands now constituting the Ramsey plantation. William Ramsey and Mrs. Maria Albright and young Ramsey Weaver of Batesville are the sole surviving descendants of the pioneer William Ramsey, who was a brother-in-law to John Simpson, Web Hayden and Wiley Dunn before mentioned. Mrs. Ruth Simpson, who resided near Desha until her death in January, 1906, was a daughter of Web Hayden and was the sole survivor of his family. Dunn, with his large family, removed to the state of Texas in 1851.

Joseph H. Egner and his brother Benjamin were early settlers in Independence County; they were of German descent and were possessed of a great fund of dry humor. Joseph Egner served as sheriff of the county for three terms in the early thirties. Before coming to this county he resided at the Arkansas Post, in Arkansas County, then a village inhabited chiefly by French people, who were fond of amusements, dancing especially. "Uncle Joe" used to tell a story on himself of an occurrence at Arkansas Post. He was then a young man, a bachelor, and one day received an invitation from an old Frenchman to accompany himself and his family that evening to a dancing party in the neighborhood. When Egner reached the Frenchman's house the old man and family were already seated in a wagon drawn by a pair of oxen. There was just one

vacant seat in the rear end of the wagon bed, which the old Frenchman motioned Egner to take. It was growing dark and Egner found himself seated by the side of a young woman wearing a sunbonnet. He began to talk to her in a soft blarney fashion, supposing her to be one of the young girls of the family, of whom there were two or three. The old Frenchman sitting in the fore part of his wagon bed looked back two or three times, and finally said: "Monsieur de Egner, you talk to de nig." To Uncle Joe's great consternation, and to the infinite amusement of the French girls, he found he had been making love to the negro servant girl.

In May, 1832, a young man named Henry Neill, a native of Kentucky, rode into Batesville and stopped at Bates' tavern. Later he settled near the present village of Desha on what is now known as the Neill homestead. In December, 1832, Job Stark, also a native of Kentucky, with his wife, Elizabeth Grey Stark, born and reared in North Carolina, and a large family of sons and daughters reached the county from St. Charles County, Missouri, and purchased lands of Rueben Millsap on Blue Creek, or Legget's Creek, three miles east of Batesville. In 1836 Henry Neill and Dorcas Stark were married and resided for more than sixty years on the homestead near Desha, the husband dying in February, 1893, aged eighty-five years, and the wife in July, 1902, aged eighty-six years. Henry Neill was a member of the legislature in 1846, with C. M. F. Noland and Judge John C. Brickey as his colleagues. In 1847-48 he was register of the United States land office at Batesville, and in the seventies was an associate justice of the county court and afterward judge of the county and probate court of this county. Stark at his death, about 1844, left only one son, who left no male descendants, so that the Stark name became extinct in the county.

Whitmill Leggett settled just east of the Stark farm on Blue Creek, about 1827, entered land at the government land office and reared a considerable family of sons and daughters. Leggett was from North Carolina; his numerous descendants, some of them of his name, reside in the neighborhood of Moorefield.

Josephus A. Cornwall was a pioneer, settling in Greenbrier

township on what is now known as the Captain Cullins farm. His wife was a Miss Nancy Hardin, to whom he was married in 1828, a sister to Joseph Hardin, one of the proprietors of the town of Batesville. Cornwall was a Cumberland Presbyterian preacher, a man of some education and force of character, and highly esteemed by a large circle of people. He migrated with his family of one son and several daughters in the year 1845 or 1846 to the then Territory of Oregon, making the trip overland with ox teams.

During the war between the states Independence County was occupied by the Federal army from May 1, 1862, till July of that year; then again by Federal forces from November, 1863, until May or June, 1864, with occasional cavalry raids between times. But one engagement of any note between Confederate and Federal troops occurred within the limits of the county, of which the following may be taken as an official report, as it was originally furnished by the Confederate commanding officer:

"Waugh's Farm—The fight at Waugh's farm in Independence County was one of the minor engagements, but brilliant and decisive. Capt. George W. Rutherford, with a part of his own company of Dobbins' cavalry regiment and Capt. S. J. McGuffin's company of boys called the "Popcorn Company," then unattached, Captain McGuffin being second in command, was resting in Knight's Cove (now Stone County), when he received information that a train of forty-three foraging wagons with an escort of 147 men from the eleventh Missouri cavalry, commanded by Captain Cassell, was encamped for the night at James Waugh's farm, eleven miles northwest of Batesville, and he determined to attack them with the eighty-three men he had with him. Crossing White River above Penter's Bluff, after a night march of some fifteen miles, Captain Rutherford reached the Federal camp just after daylight on the 18th of February, 1864, and attacked with such vigor that he stampeded the escort after a short, sharp fight, killing thirteen, wounding four and capturing seventeen, among the killed being the Federal commander, Captain Cassell. Captain Rutherford captured and carried off 127 mules, with their harness, and thirty-four horses, with their accoutrements, and burned forty-three wagons, losing in the engagement four killed and three wounded."

It is no idle boast to claim that the people of Independence County have, since its formation, occupied a front rank in intelligence, industry and culture. In the war between the states she furnished twenty-three organized and full companies to the Confederate army, one company of which—company K, commanded by Capt. William E. Gibbs—in Churchill's regiment of Arkansas mounted riflemen, participated in the second real battle of the war—Oak Hills, or Wilson's Creek, August 10, 1861, where it sustained a loss of five men killed and fourteen wounded.

In the late forties the Soulesbury Institute, a male and female academy, was established at Batesville under the auspices of the Methodist Episcopal Church, South. It was an incorporated institution and was successfully operated until interrupted and closed during the war. Many of the most prominent and wealthy residents of northern and eastern Arkansas had sons and daughters educated in this academy, as it maintained for several years a corps of instructors consisting of well-educated men and women from the eastern states. The institution was never able to resume with much success after the close of the war, and, having become involved in debt to some extent, its property, lots and buildings were sold, and the school was abandoned.

In 1872 the Arkansas College of Batesville was incorporated, buildings were erected, and the school launched in the fall of that year under the presidency of Rev. Isaac J. Long, a Presbyterian preacher from South Carolina, a man of scholarship and high character, who continued at the head of the school until his death in 1891. After an interval of a year or two, under the presidency of another party, Eugene R. Long, a son of Dr. I. J. Long, was made president of the college and is now such.

The earliest newspaper published in the county, of which we have any knowledge, was the *Batesville News*, of which the writer is the owner of a bound file running from May 4, 1838, to May 7, 1840. Byers and Jordan were the publishers, and William Byers was the editor. The paper was Whig in politics. The writer is of opinion from recollection that there was a newspaper published in Batesville called the *Batesville Whig*, edited

and owned by Col. Charles F. M. Noland, and published by a printer named E. W. Jordan, who was a member and bugler of Captain Porter's company in Yell's regiment. In the late forties and early fifties William Cochran published *The Batesville Eagle*. Later came a paper, *Commercial Standard*, intensely democratic, published and edited by John C. Claiborne in 1853, 1854 and 1855, suspending in the early part of 1856. The plant of this paper was purchased in the spring of 1856 by Urban E. Fort, then sheriff of the county, who founded the *Independent Balance*, with the late Prof. W. Shelby Kennard as editor. This paper, which espoused the American party and supported Bell and Everett, was published until the advent of the Federal army in May, 1862, when the editor refugeeed south and joined the Confederate army, to be severely wounded at the capture of Arkansas Post.

The *Democratic Arkansian*, by W. H. H. Russell, was founded in 1858 or 1859, and lasted until about the beginning of 1861.

The first paper published in Batesville, or in the county, after the cessation of hostilities, was the *North Arkansas Times*, founded by Charles and H. K. Maxwell, in March, 1866; it continued until 1876. Meanwhile, in 1868, the *Batesville Republican* was founded by James Siler and Michael McAnanny, northern men, and became the official newspaper of the county. It lasted until the adoption of the constitution of 1874 and then died for want of sustenance.

In 1877 the *Batesville Guard* was founded by Frank D. Denton and has been published continuously since, and has the reputation, under the present management, of being the best edited newspaper in Arkansas. The *Guard* has issued a daily edition for the past year.

The *Independence County News* is a weekly paper published at Batesville by the News Printing Company. There is also a lively weekly published at the town of Newark—the *Newark Journal*.

In natural wealth and resources Independence County stands preëminent. The alluvial lands along White River are unsurpassed in fertility and are of large area; the largest bodies are Oil Trough bottom on the south side of White River, begin-

ning fourteen miles below Batesville, and Big bottom on the north side of the river, twelve miles below Batesville, comprising an area of many thousand acres. There are also large bodies of the finest quality of uplands, yielding corn, cotton, wheat, oats and grasses, almost as abundantly as the river bottoms.

The south side of the county contains considerable yellow pine of good dimensions and quality. The north part of the county also contains large and valuable deposits of manganese ore, extending to within three miles of Batesville. Mines have been operated for the past twenty-three years and many thousand tons of the ore shipped to St. Louis, Chicago and Johnstown, Pennsylvania.

The most valuable mineral deposit, however, is the gray marble, known as "Sinclair Marble," of which the new state capitol at Little Rock was in part constructed, vast deposits of which extend to within three miles of Batesville. This stone has been in use in a limited way for sixty years, there being one monument of that age in the old Batesville cemetery, and another about twenty feet high at the grave of Capt. A. R. Porter, heretofore mentioned, which was erected in the winter of 1847. These monuments, perfectly preserved, are standing witnesses to the durability of this stone.

SOME HISTORIC LANDMARKS IN ARKANSAS.

BY MISS CLARA B. ENO.¹

THE OLD FORT AT FORT SMITH.

It is thought that the first white men to visit the location of Fort Smith was an exploring party, under command of Le Harpe in 1722, sent out under the direction of Governor Bienville to explore the Arkansas River and adjacent country in search of meat and gold.

They must have visited many beautiful spots on their voyage up the river, among them being the place where the Poteau empties into the Arkansas; they or subsequent Frenchmen named the spot Belle Point on account of its peculiar beauty. Then the entire river bank at that point was covered with a forest of oak trees, and a bluff extended from the foot of Garrison avenue to above the mouth of the Poteau, on which there were ferns and lichens, making it a spot of beauty. From an account of the expedition from Pittsburg to the Rocky Mountains performed in the years 1819 and 1820 by order of J. C. Calhoun, secretary of war, under the command of Maj. Stephen H. Long, compiled by Edwin James, botanist and geologist for the expedition (volume 2, page 260 *et seq.*), we learn that the site was selected by Major Long in the fall of 1817 and that Maj. William Bradford established a military post, named Belle Point. In October or November it was garrisoned by one com-

¹Clara B. Eno, though a native of Van Buren, received her education in Connecticut and at Morris Female Institute, Morristown, New Jersey. When she was grown she returned to Arkansas and began to teach school in 1876. She taught at Van Buren, Conway and Clarksville until 1894. She has been an active member of the Woman's Literary Club and Village Improvement Club of Van Buren. She is a member of the Mary Percival Chapter, D. A. R., tracing her ancestry back to four Revolutionary soldiers. She is entitled to membership in the Colonial Dames. She is an active member of the Episcopal Church, of the Arkansas Historical Association and of the Arkansas History Commission.—EDITOR.

pany of riflemen under his command.² This company of hardy riflemen came from old Fort Adams on the Mississippi, at Ellis Cliff, where they were stationed after the battle of New Orleans.³

The site of the post is thus described in Major Long's report to Brig. Gen. Thomas A. Smith, commanding the ninth military department, dated May 16, 1818:

"This place, Belle Point, is situated in north latitude 35 degrees 23 minutes 12 seconds, at the junction of the Poteau River, four hundred and sixty miles from the mouth of the Arkansas, pursuing its meanderings, and about twenty miles above the Osage boundary line.

"The situation selected for the garrison is secure and healthy, and affords a complete command of the rivers above mentioned. Its elevation is about thirty feet above the water, from which it is accessible by an easy ascent. The point is supported upon a basis of stratified sandstone, well adapted for building, and is surrounded by woodland, affording an abundance of excellent timber. The soil of the adjacent country is exuberant, producing corn, cotton, etc., in great perfection. * * *

"In selecting the position a particular regard has been paid to your instructions, which required a site as near to the point where the Osage boundary line strikes the Arkansas as circumstances would permit."

Major Long's report was forwarded by General Smith to the adjutant and inspector general of the army, under date of May 16, 1818, with the following remark:

"The season being so far advanced at the time of Major Bradford's arrival at the point fixed on for the occupancy of his command, he was unable to do more than erect huts for his men last season. It is, however, to be presumed that he has by this time made considerable progress in the work, but of this I have not been informed."⁴

The buildings erected were built of heavy hewed logs forming two sides of a hollow square terminated by strong block-houses at opposite angles and fronting the river. The name of the post was changed from Belle Point to Fort Smith December, 1818, in honor of General Smith, as it was the custom to name the forts after a general. At this time the post was in the Territory of Missouri, Arkansas Territory not being formed until July 4, 1819.

The post was continuously occupied until April, 1824, when

²The Adjutant General, 1910. Letter.

³W. J. Weaver's memories of Old Fort Smith, in *Fort Smith Elevator*, September 16, 1906.

⁴Col. Ben Duval's Historical Address, 1876.

the troops were removed to Fort Coffee. During this time company A, rifle regiment, under command of Bvt. Maj. William A. Bradford from November, 1817, to February, 1822, companies B, C, G, H, K, seventh infantry, with Col. Matthew Arbuckle, Maj. A. R. Woolley and Capt. William Davenport, were stationed here from February, 1822, to April, 1824, when the post was abandoned. Col. Matthew Arbuckle was in command three different times during that period.

When the treaty with the Choctaws was made in 1825 the post was found to be in the Choctaw country. The treaty reading "one hundred paces east of Fort Smith and then running due south to Red River." The land on which the post was located is between the mouth of the Poteau and Iron Mountain tracks. The post burying ground is now included in the north-east corner of the national cemetery.

Company C of the seventh infantry, commanded by Capt. John Stuart, was stationed here from March 22, 1833, to June, 1834. After nine years of vacancy the buildings could not have been in very good condition, but whether Captain Stuart's troops occupied them or built new ones is not known.

As the Indians were of a friendly disposition, we can imagine them coming to the post with their handiwork, game and berries, receiving in exchange different commodities. The post was again vacated June 16, 1834, and was not occupied until July 27, 1838, when Captain Bonneville, in command of company F, seventh infantry, arrived.

About this time, 1838, it was decided to purchase land within the borders of Arkansas for a substantial fort. Several tracts of land were offered the government, among them being Mazzard Bluff, eight miles from Fort Smith, owned by Dr. Joseph Bailey, a surgeon in the army; one known as Lee's Creek Bluff, situated on the north side of the river between Fort Smith and Van Buren and owned by Dr. Jonathan McGee; and the land south of the Arkansas River, owned by Capt. John Rogers.

Each brought all the influence they could to bear on their tract. Dr. McGee went to Washington in the interest of his, but on account of the severe illness of his wife, returned home before the question was settled, leaving it in the hands of one

of the senators. The United States government appointed commissioners to decide on the site; Captain Bonneville, being one of them, went to Washington to make the report. As there had been an agreement between Captain Bonneville and Capt. John Rogers whereby the former would receive benefit, he reported in favor of the land owned by Rogers. The government purchased 300 acres from him on the south side of Rogers avenue. The fort buildings were placed on that portion nearest the river, the rest of the land with the exception of the national cemetery was known as the reserve.

After the fort was abolished in 1871 the land was turned over to the interior department, and in 1884 Judge J. H. Rogers, then congressman from that district, had a bill passed in congress that the land be sold for the benefit of the public schools of the city.

When Captain Belknap with two companies of third infantry arrived in October, 1838, he selected for temporary quarters, as the old fort was to be demolished, the sixteenth section of township 8 north, of range 32 west, being the land now known as Fitzgerald Addition and on part of which the Roman Catholics have their buildings, the land having been bought by Rt. Rev. Andrew Byrne. The camp was known as Cantonment Belknap. Log houses were built for the officers and soldiers and furnished with home-made furniture.

The campus was on the south side of the road, surrounded by rows of huts with mud stick chimneys at one end and a door at the other. The young officers' quarters were at the southwest corner; the adjutant's quarters were where the priest's house now stands; the log cabin of the sutler was on Towson avenue, but then called Texas road.⁵ The commanding officer's quarters were also of logs, and situated on the north side of the road. This was the building occupied by Gen. Zachary Taylor while commander of the second military department from 1841 or 1842 until 1844,⁶ when he was transferred with headquarters at Baton Rouge. The old chimney is all that remains of the old building. The Roman Catholics have converted it into a shrine to the Virgin Mary.

⁵Memories of Old Fort Smith, by Mr. Weaver.

⁶Arkansas Intelligencer, June 7, 1844.

General Taylor's wife and daughter were with him.

The story that Miss Taylor and Jefferson Davis eloped from here is incorrect, as she was visiting at the home of an uncle when married. It is said that General Taylor was held in high respect and awe by the Indians, his great personal character here, as elsewhere, standing out in bold relief. The troops remained here until about 1845, when they were removed to their new quarters.

We must now retrace our steps to the beginning of the new fort. Work was begun in 1838 or 1839; the plans used are said to be those of Vaubanne, the great military engineer of France. The ground work of the walls was in shape of an irregular pentagon with a cannon bastion at each angle of the wall.⁷ The buildings were to be of stone and brick. The lovely bluff on the river was turned into a quarry to furnish the rock of which the great walls and foundations were to be built. There was left no trace of beautiful Belle Point, and those of this generation must draw on their imagination to see it as it was when named. All the gate posts were of large and neatly chiseled stones, the cannon bastions also of cut stone. The two stone buildings now standing are evidences of the substantial work done.

The work on the fort progressed very slowly. During the session of the Arkansas legislature of 1842 and 1843 a resolution was sent to the war department, asking that the work be completed so as to protect the western frontier. This resolution was presented to the senate by Governor Fulton. One hundred and twenty thousand dollars had already been spent, but the memorial asked that twenty or thirty thousand more be appropriated for its completion, as they desired its protection not so much from the Indians, except the Ross and Ridge parties, as the lawless element that is always found on the frontier. In September, 1845, Captain Alexander, quartermaster, had charge of the work, trying to complete it. "The wall was completed to its height on the south side and to the eastern gate, with portholes for the musketry about four feet apart; the remainder of the walls were built up about twelve feet high."⁸

⁷W. J. Weaver, *Memories of Old Fort Smith*.

⁸*Memories of Old Fort Smith*, by W. J. Weaver.

General Taylor was not in favor of the fort being built; he especially disapproved of spending so much money on the walls. This fact may account for the length of time it was in being built. General Taylor no doubt used his influence with the war department against spending so much money; he felt he could keep peace on the border without such an expensive fort, as there were no hostile tribes near. There were six buildings, two officers' quarters, one soldiers' quarters, one guard-house, one commissary, one quartermasters'. The first three were large, two-story brick buildings with handsome brick columns, with both upper and lower porches on the east and west sides, and with large, roomy basements for kitchens. Two buildings were on the west side of the campus and occupied by the officers and their families. These were destroyed during the Civil War. The soldiers' quarters, a building located on the east side, had room for four companies, kitchen in the basement and laundry room in the large attic. This building burned in 1849; the following account is taken from the *Arkansas Intelligencer*, April 14, 1849:

"On Monday about 2 o'clock the large brick building known as the soldiers' quarters in the garrison was discovered to be on fire in the upper story of the left wing. The citizens and a number of California emigrants assisted in carrying out and saving the furniture and other articles from the devouring elements. The building was very large and spacious, elegantly built and covered with slate, and will prove a serious loss to the troops. Loss from twenty to thirty thousand."

In the Masonic Temple hangs an oil painting by Hook, showing the brick buildings and part of the wall. It was presented to the order by Mrs. J. R. Kennedy.

A one-story building was afterward erected for the soldiers, which, after the fort was abandoned, was used by the United States court and is now (1910), with some additions, the United States jail. The commissary and quartermasters' buildings were of stone, and formed part of the wall. These two buildings are still standing. One is known as the "Old Commissary" and is located just back from Garrison avenue, near the Frisco station. During the Civil War a number of ladies were prisoners here until they could be sent south. The old quartermaster building is located between the tracks of the Frisco and the Iron Mountain. The club women of Fort Smith are asking the city that

the "Old Commissary" be given to them for a museum where historical records can be kept.

Much life was given to the fort by those going to the Mexican War, also by the "forty-niners" on their way to the California gold fields, as Fort Smith was on one of the direct routes to Santa Fe. There being no hostile Indians near, the officers must have had an easy time.

The troops under Capt. C. C. Sibley were withdrawn July 2, 1850, but the same company returned March 14, 1851. From that time on it was occupied sometime by infantry and sometime by cavalry until 1861, when Captain Sturgis, in command of two companies of cavalry, that of his own and that of Stanley's, abandoned it on the approach of the Confederates. The Confederates, with Hindman in command, were there until September, 1863. It was reoccupied by Union volunteer troops from various states from September 1, 1863, to May 9, 1866, when regular troops took their place and remained there until the post was abandoned in 1871.

The land on which the fort buildings stood is now dotted with business houses and factories. An appropriate monument or marker should be placed at each of the three points occupied by the troops.

The following is taken from the records of the war department:

OCCUPIED BY TROOPS.

October or November, 1817, to April, 1824.

Reoccupied March 22, 1833.

Troops withdrawn June 16, 1834.

Reoccupied July 27, 1838.

Troops withdrawn July 2, 1850.

Reoccupied March 14, 1851.

Troops withdrawn March 1, 1858.

Reoccupied December 18, 1858.

Troops withdrawn June 10, 1859.

Reoccupied September 19, 1860.

Troops withdrawn April 23, 1861.

Reoccupied September 1, 1863.

Troops withdrawn September, 1871.

COMMANDERS OF THE POST.

Maj. William Bradford, rifle regiment, November, 1817, to February, 1822.

Col. Matthew Arbuckle, seventh infantry, February, 1822, to March, 1822.

Maj. A. R. Woolley, seventh infantry, March, 1822, to June, 1822.

Col. Matthew Arbuckle, seventh infantry, June, 1822, to January, 1823.

Capt. William Davenport, seventh infantry, January, 1823, to May, 1823.

Col. Matthew Arbuckle, seventh infantry, May, 1823, to April, 1824.

Capt. John Stuart, seventh infantry, March 22, 1833, to June 16, 1834.

Capt. B. L. E. Bonneville, seventh infantry, July 27, 1838, to October 24, 1838.

Capt. W. G. Belknap, third infantry, October 24, 1838, to September 25, 1840.

Capt. W. W. Lear, fourth infantry, September 25, 1840, to September 17, 1842.

Capt. William Hoffman, sixth infantry, September 17, 1842, to May 15, 1843.

Capt. J. D. Searight, sixth infantry, May 15, 1843, to November 16, 1843.

Capt. William Hoffman, sixth infantry, November 16, 1843, to August 30, 1845.

Maj. B. L. E. Bonneville, sixth infantry, August 30, 1845, to December 21, 1845.

Capt. William Hoffman, sixth infantry, December 21, 1845, to January 4, 1846.

Maj. B. L. E. Bonneville, sixth infantry, January 15, 1846, to July 13, 1846.

Capt. E. B. Alexander, A. Q. M., July 13, 1846, to October 13, 1846.

Lieut. I. W. T. Gardinier, first dragoons, October 13, 1846, to May 10, 1847.

Lieut. F. F. Flint, sixth infantry, May 10, 1847, to November 3, 1848.

Capt. C. C. Sibley, fifth infantry, November 3, 1848, to July 2, 1850.

Capt. C. C. Sibley, fifth infantry, March 14, 1851, to June 7, 1851.

Capt. R. C. Gatlin, seventh infantry, June 7, 1851, to May 24, 1852.

Col. Henry Wilson, seventh infantry, May 24, 1852, to October 14, 1852.

Maj. George Andrews, seventh infantry, October 14, 1852, to May 13, 1853.

Col. Henry Wilson, seventh infantry, May 13, 1853, to July 18, 1853.

Capt. H. J. Hunt, second artillery, July 18, 1853, to August 7, 1853.

Capt. T. H. Holmes, seventh infantry, August 7, 1853, to October 1, 1853.

Lieut. Franklin Gardner, seventh infantry, October 1, 1853, to November 26, 1853.

Col. Henry Wilson, seventh infantry, November 26, 1853, to May 5, 1855.

Lieut. J. H. Potter, seventh infantry, May 5, 1855, to May 22, 1855.

Capt. S. G. French, A. Q. M., May 22, 1855, to December 8, 1855.

Capt. R. C. Gatlin, seventh infantry, December 8, 1855, to January 27, 1856.

Maj. Isaac Lynde, seventh infantry, January 27, 1856, to March 3, 1856.

Capt. R. C. Gatlin, seventh infantry, March 3, 1856, to December 19, 1856.

Maj. Isaac Lynde, seventh infantry, December 19, 1856, to June 23, 1857.

Capt. R. C. Gatlin, seventh infantry, June 23, 1857, to August 1, 1857.

Capt. Lafayette McLaws, seventh infantry, August 11, 1857, to September 11, 1857.

Capt. S. G. Simmons, seventh infantry, September 11, 1857, to February 8, 1858.

Lieut. C. J. Brooks, seventh infantry, February 8, 1858, to March 1, 1858.

Capt. D. D. Sacket, first cavalry, December 18, 1858, to June 24, 1859.

Capt. W. W. Burns, commissary sutler, June 24, 1859, to July 21, 1859.

Lieut. E. W. Crittenden, first cavalry, July 21, 1859, to September, 1859.

Capt. S. D. Sturgis, first cavalry, September 19, 1860, to April 23, 1861.

Col. William F. Cloud, first Kansas cavalry, September 1, 1863, to December 1, 1863.

Col. John Edwards, eighteenth Iowa infantry, December 1, 1863, to March 21, 1864.

Lieut. Col. A. W. Bishop, first Arkansas cavalry, March 21, 1864, to May 19, 1864.

Col. W. R. Judson, sixth Kansas, May 19, 1864, to January 3, 1865.

Lieut. Col. J. B. Wheeler, thirteenth Kansas infantry, January 3, 1865, to February 1, 1865.

Brig. Gen. Cyrus Bussey, United States volunteers, February 1, 1865, to September, 1865.

Col. M. M. Trumbull, ninth Iowa cavalry, September, 1865, to February, 1866.

Col. Paul Harwood, fifty-seventh U. S. C. T., February, 1866, to May 9, 1866.

Capt. R. W. Barnard, nineteenth United States infantry, May 9, 1866, to September, 1866.

Capt. S. S. Culbertson, nineteenth United States infantry, September, 1866, to November 13, 1866.

Capt. William J. Lyster, nineteenth United States infantry, November 13, 1866, to January 14, 1867.

Capt. James B. Mulligan, nineteenth United States infantry, January 14, 1867, to February 25, 1867.

Col. DeLaney Floyd Jones, nineteenth United States infantry, February 25, 1867, to October 22, 1867.

Lieut. Col. Pinckney Lugenbeel, nineteenth United States infantry, October 22, 1867, to April, 1869.

Capt. John J. Upham, sixth United States infantry, April 26, 1869, to June 10, 1869.

Capt. Montgomery Bryant, sixth United States infantry, June 10, 1869, to November 10, 1870.

First Lieut. F. W. Thibaut, sixth United States infantry, November 10, 1870, to January 1, 1871.

Capt. Montgomery Bryant, sixth United States infantry, January 1, 1871, to July 18, 1871.

First Lieut. F. W. Thibaut, sixth United States infantry, July 18, 1871, to September, 1871.

GARRISON OF POST.

Company of rifle regiment, November, 1817, to February, 1822.

Companies B, C, G, H and K, seventh infantry, February, 1822, to April, 1824.

Company C, seventh infantry, March 22, 1833, to June 16, 1834.

Company F, seventh infantry, July 27, 1838, to January 9, 1839.

Companies B and H, third infantry, October 24, 1838, to September 25, 1840.

Company D, third infantry, December 28, 1839, to July, 1840.

Companies F and K, third infantry, December 28, 1839, to September 25, 1840.

Company E, fourth infantry, September 25, 1840, to September 19, 1842.

Companies D and F, sixth infantry, September 17, 1842, to July 13, 1846.

Company D, first dragoons, August 10, 1846, to May 10, 1847.

Detachments, May 10, 1847, to October 31, 1848.

Company B, fifth infantry, October 31, 1848, to May 6, 1850.

Company E, fifth infantry, October 31, 1848, to July 2, 1850.

Company E, fifth infantry, March 14, 1851, to June 7, 1851.

Company F, seventh infantry, May 14, 1851, to May 8, 1854.

Company M, second artillery, July 9, 1853, to August 16, 1853.

Detachment, seventh infantry, May 8, 1854, to December 8, 1855.

Companies B and F, seventh infantry, December 8, 1855, to August 1, 1857.

Companies D and H, seventh infantry, August 11, 1857, to February 8, 1858.

Detachment, seventh infantry, February 8, 1858, to March 1, 1858.

Companies A and B, first cavalry, December 18, 1858, to June 10, 1859.

Detachment, first cavalry, June 10, 1859, to September, 1859. .

Company E, second artillery, September 30, 1860, to October 3, 1860.

Company F, second artillery, September 30, 1860, to October 15, 1860.

Companies D and E, first cavalry, September 19, 1860, to April 23, 1861.

Volunteer troops of various states, September 1, 1863, to May 9, 1866.

Company F, third battery, nineteenth infantry, May 9, 1866, to October, 1866.

Company G, second battery, nineteenth infantry, June, 1866, to November, 1866.

Company B, nineteenth infantry, November 13, 1866, to May 1, 1867.

Company F, nineteenth infantry, January 14, 1867, to April, 1869.

Company H, nineteenth infantry, October 9, 1867, to April, 1869.

Company A, nineteenth infantry, October 15, 1867, to April, 1869.

Company E, nineteenth infantry, December 4, 1867, to April, 1869.

Company G, nineteenth infantry, December 4, 1867, to April, 1869.

Company K, nineteenth infantry, December 24, 1867, to April, 1869.

Company I, sixth infantry, April 26, 1869, to January, 1870.

Company K, sixth infantry, April 26, 1869, to January, 1870.

Company D, sixth infantry, June 9, 1869, to July 18, 1871.

Detachment company D, sixth infantry, July 18, 1871, to September, 1871.

E. D. TOWNSEND, Adjutant General.⁹

Adjutant general's office, Washington, D. C., August 7, 1876.

We find among the commanders the names of several who became identified with this part of the country—Col. Matthew Arbuckle, Maj. B. L. E. Bonneville and Capt. R. C. Gaflin. Lieut. (afterward Gen.) Hancock was there for a while. Among others was Dr. Joseph Bailey, whose descendants with those of others connected with the early history of the fort are still living there.

Among other historical landmarks in Sebastian County are the three military roads, the old Presbyterian Church and Major Rector's home.

THE OLD FORT ON CANE HILL.

When the early settlers came to Cane Hill in Washington County they found the remains of an old fort, which was evidently the work of civilized men and not of savages.

This fort was built around some spring near the center of Cane Hill, on what is known as the White McClellan place, now owned by Mr. John McClellan. A writer¹⁰ in 1859 says:

"A portion of the stone wall still exists, but the greater part has long since been demolished. When I first visited that locality in 1832 two squares of wall were standing. The work was of rough but substantial masonry, about a half acre, including several springs, was enclosed; huge stone basins, curiously carved and of various shapes and dimensions, were found there and in the vicinity by the early settlers.

"Daniel Boone, the great pioneer, accompanied by the late Governor Baggs of Missouri, were the first white men who climbed that hill. They visited it in 1804 or 1805 and named the hill 'Black Hill.' The Indians then residing there told them that as far back as their tradition reached, the fort had been there and they had no idea by whom or when it had been built.

"An oak, at least four feet in diameter, standing on part of the dilapidated wall and evidently planted since the erection of the wall, bears indisputable evidence of the lapse of several centuries. It is said the wild Indians held yearly councils within the fort; they also resorted thither

⁹Col. Ben Duval's Historical Address, 1876.

¹⁰Memphis Appeal, April 10, 1859.

to smoke the pipe of peace and hold consultation relative to their general good. They regarded the old fort as a consecrated place."

From another source¹¹ we learn that marks of steel tools on stone and wood were very plentiful, as also were the marks of steel tools. "I picked up within the enclosed area a very old ax of ancient make, left there, doubtless, by the original builders."

The old tree showed marks of fighting. Hatchets of stone, sharp-pointed instruments for cutting stone and an abundance of arrow heads were found by the early settlers. They also occasionally picked up Spanish coins, giving the supposition that the fort was built by De Soto and his men. The entrenchments were plainly seen until after the Civil War; now the ground is in cultivation. Thus has passed one of the very earliest landmarks of the northwest part of the State.

THE ROCK HOUSE NEAR CLARKSVILLE, JOHNSON COUNTY.

Five miles north of Clarksville, in section 7, township 10 north, range 23 west, is situated what is known as the "Rock House," which is in the southern side of a mass of red sandstone that crops out on the side of the hill that rises two hundred feet above and about a fourth of a mile from a small stream at its southern base. This cavern is about fifty feet wide, twenty-five feet deep, extending into the rock, and ten feet high. The shape is more like that of a part of a sphere.

There are two rooms side by side connected by an archway formed by two pillars of stone extending from the dome to the ground, having the appearance of being washed out by the rush of waters. The left one, as you enter, is much larger than the other, and in this room about a foot from the ground are over twenty figures of what seem to be turtles, lizards, snakes, both coiled and running, and also to represent wigwams, all cut into the sandstone to the depth of a quarter or half inch. The incisions are filled with an accumulation of dirt which makes it impossible to tell just how deep they are.

The floor of this room is of dirt. In the rock floor of the smaller room is a round hole nineteen inches deep, seven and one-half inches in diameter at the top and about four at the

¹¹Mr. J. P. Carnahan, Cane Hill.

Both of the rooms have large openings, the entire width of each, facing the south. As you approach from the rear there is nothing to indicate a cavern until you stand on the very edge and look down. Coming historians may be able to decipher the figures and disclose the history they contain.

OTHER LANDMARKS.

bottom, in which the Indians must have pounded their corn.

At the following places other landmarks have been located:

At Blythesville there is an Indian mound said to contain the remains of the celebrated chief, Chickasawbe, and three miles below Osceola is another equally as interesting, owned by Mr. George Thomason. The country around Osceola seems to have been a rendezvous of the mound builders.

Two miles from DeVall's Bluff on the White River is an old fort used by the soldiers during the Civil War. There is at Augusta an old warehouse used as a prison during the Civil War.

SOURCES: Col. Ben T. Duval's Historical Address, 1876; Memories of Old Fort Smith, W. J. Weaver, in *Fort Smith Elevator*, September 16, 1906; War Department Records; Old Newspaper Files; Old Settlers.

REMINISCENCES OF A FEDERAL PRISONER.

BY JOHN A. BERING.¹

I was taken prisoner at the battle of Sabine Cross Roads, Louisiana, April 8, 1864, and made my escape August 20 from the Confederate prison, Camp Ford, Texas, by means of a forged pass, in company with Lieut. W. J. Srofe of my regiment, the forty-eighth Ohio volunteer infantry. We started for Little Rock, Arkansas, 300 miles northeast, which was the nearest point occupied by Federal troops. During our travels at night we were guided by the north star and confined ourselves to the roads that ran northeast. During the day we took our course by the sun, but always kept in the timber, and lived off of such as the woods and fields afforded. Toward evening of September 1 we halted at a small stream for the night. This was the twelfth day since we started on our journey, and by referring to our maps we found that we were 220 miles from Camp Ford and about 80 miles from Little Rock. Lieutenant Srofe made a fire with the last match, while I procured some corn from an adjoining field, of which we parched a sufficient quantity to last until we reached our lines, which we thought would take three or four days.

We were now in the Arkansas hills and could hear the whir of the spinning wheel at intervals on all sides, which enabled us to give the houses on our route a wide berth. The following

¹John A. Bering was born in Cincinnati, Ohio, September 10, 1839. At the age of twelve years his parents moved near Lynchburg, Ohio. Soon after the beginning of the Civil War he volunteered in a company, recruited at Lynchburg, of which he subsequently became captain, and later major, his company being a part of the forty-eighth regiment Ohio infantry. In February, 1862, his regiment joined Grant's forces at Paducah, Kentucky, and participated in Grant's campaigns until the surrender of Vicksburg, Mississippi. He was mustered out of the service June 16, 1865.

Mr. Bering was engaged in general mercantile business at Lynchburg for thirty-five years, and he served as deputy collector United States internal revenue from 1879 to 1882. He retired from business in 1904.
—EDITOR.

morning, September 2, we made an early start and saw a large number of deer roaming over the hills and valleys. We halted at a large spring for breakfast, but did not tarry long over our parchel corn, as we were now in a hurry to finish our journey.

While traveling through the woods about an hour later, we saw a road ahead of us; we stopped to listen and heard a wagon coming on our left. As we could not cross the road without being seen, we ran back a short distance and hid in the under-brush. The wagon came rumbling along slowly, and when opposite from where we lay, I looked up very carefully, and saw two men in a wagon busily engaged in conversation, and slashing the whip at the oxen which they were driving. I was convinced that they had not seen us, therefore I laid down again to wait until they were out of sight before venturing across the road. They had passed but a short distance, when they halted and began talking very loud. In the meantime we heard someone approaching through the brush. I began to get uneasy and raised up cautiously to see what this all meant. As I looked up I saw a Confederate soldier on a mule with his gun pointed at us, not more than thirty years distant; at the same time he called on us to surrender. I dropped down under a bush, completely dumfounded. Had a thunderbolt descended in our midst from a clear sky it could not have stunned us so completely. In the meantime the Confederate had lowered his gun, but as we did not stir, he raised his rifle once more and again ordered us to surrender. I arose, threw up my hands, and requested him not to shoot, that we would surrender. He then ordered us to go over to the wagon, where the two men were waiting for us. My first question to them was, How did you happen to see us when you passed by? The mounted Confederate, overhearing my question, replied that they had not seen us, that he had been on picket and was on his way to breakfast when he saw us come near the road, and watched while we ran back and hid in the brush. He also heard the wagon coming, and concluded to wait until it came up and get assistance to capture us. In reply to their questions we informed them who we were and where we came from, but they did not seem to believe our statement. We were then searched to see whether

we had any weapons concealed about our persons, but they found nothing more than an old table knife. They then took a rope from the wagon and tied our arms behind us, after which our captor said he was going to take us to Lieutenant Shote's house, about seven miles from there. The men in the wagon then continued their journey in the opposite direction. This was all done so suddenly that it seemed like a dream, but with my arms tied behind me I soon realized the stern reality of my situation.

The nervous energy that had kept me up so far was now over; I felt weak and hungry and begged our captor for something to eat. He halted at the first house we came to and procured some cornbread, then took us to a near-by blacksmith shop while he and the blacksmith kept a vigilant watch over us. After we had eaten the cornbread the ropes were readjusted and we resumed our journey.

It must have been seven long miles that we marched, as we did not reach Lieutenant Shote's house until the middle of the afternoon. The log house was situated on a hillside in the midst of a dense pine forest. As we entered the house a young man dressed in gray, who was lying on the floor reading a book, said, "How are you, Srofe?" I was astonished at the remark and Srofe was likewise puzzled. I asked him who he was and where he came from? He replied that his name was John Baker, of the one hundred and thirtieth Illinois regiment; had made his escape from Camp Ford prison, Texas, and was recaptured in front of this house about an hour previous. Miserable as we felt, we had a hearty laugh over this strange meeting. This convinced the Confederates that we were Federal soldiers and no mistake. Lieutenant Shote and his family, consisting of his wife and several small children, were also in the room when we entered. The lieutenant immediately ordered the ropes removed, with which we were bound, and told his wife to prepare dinner for us. It is needless to add that we did ample justice to the homely fare set before us.

Late in the afternoon we were put in charge of four Confederate guards and were taken to Sergeant Luther's house, three miles distant, where we arrived in the evening and were to remain there for the night. The family consisted of the

mother and her two grown daughters. Sergeant Luther had taken some deserters to a neighboring town that day and had not yet returned. They prepared supper for us, consisting of string beans, pork and cornbread, which we ate by the light of a pine torch. Mrs. Luther and her daughters were very sociable, consequently we spent a very pleasant evening. It was getting late, and, not knowing what disposition they were going to make of us, we informed them that we were tired and sleepy. Mrs. Luther then made us a bed on the floor, and the guards with loaded muskets stood at the doors. Before day, the following morning, the guards awakened us, saying that we must get ready to march, and that we would get breakfast on the road. Their orders were to take us to Washington, forty-five miles south, and turn us over to the authorities there. We were soon on the way and had traveled several miles when we met Sergeant Luther with a squad of cavalry on his way home. We halted for dinner at the house of a wealthy planter. His family consisted of his wife and grown daughter. At the dinner table our hostess was very much interested to know the battles in which we had participated. We informed her that we were at Shiloh, Corinth, Vicksburg, Jackson, Arkansas Post and Sabine Cross Roads. With tear-bedimmed eyes she related that she lost two sons in the war. Her youngest son was taken prisoner at the battle of Arkansas Post, and died in a northern prison. My sympathy went out to this heart-broken mother in her great sorrow, and I could realize the suffering of the many mothers, both north and south, who went through the same sad ordeal during the Civil War. Toward evening we passed through Center Point and halted near the town at the house of an extensive planter, who lived in a large brick mansion. The home and surroundings gave evidence of a plantation conducted on a large scale. We ate supper at the same table with the family, after which we were quartered in the parlor for the night with a sentinel at the door. The next day we passed through Temperanceville and Nashville and reached Washington in the evening, and were confined in the second story of the courthouse. The next day Col. H. R. Musser, who commanded the post, called to see us. He treated us very gentlemanly and took out his pocketbook and inquired whether we

needed any money. Although we did not possess a penny between us, we thanked him very kindly, but refused to accept any financial aid. He then inquired whether there was anything he could do for us. We replied that all we asked was to be sent back to the prison, where our regiment was confined, so that we would get there before an exchange took place. He stated that he would send us forward as soon as he could get the cavalry guards ready, which would take three or four days. He also remarked that arrangements were then being made for an exchange of prisoners at Camp Ford (Tyler, Texas), and that we would have to hurry to get there in time.

Several years after the war I learned that Colonel Musser was living in Brunswick, Missouri. I wrote him a letter thanking him again for the courteous treatment extended us while we were prisoners of war in his charge. This led to a correspondence that was kept up for several years, and only ended at his death some years ago.

The day following Colonel Musser instructed Capt. James T. Otey and several other officers to take Lieutenant Srofe and myself out of our place of confinement, extend us the hospitality of the camp and give us a square meal. Washington was then the capital of Arkansas and all the Confederate machine shops of the State were located there. After a walk through the principal streets we were taken to the Confederate camp, where dinner awaited us, which consisted of fried liver, very sad-looking biscuits and corn coffee. Such kindly courtesies as we received from these Confederate soldiers in their camp while we were their prisoners has left a very bright spot in our memory of war-time prison days. They remarked that what we saw on the table was their daily fare and that they would live on sweet potatoes before they would give up the contest. After a pleasant social time spent in their quarters we were taken back to our lodgings in the courthouse.

True to his promise, Colonel Musser had the cavalry guards ready for us in four days. They were commanded by Lieutenant Whitehouse, who had orders to take us to Camden, sixty miles east. We started in the forenoon of September 8 and traveled over much of the ground where General Steele fought the Confederates the previous spring. The marks of the deadly struggle

between the two armies were still plainly visible. In the afternoon we crossed the battlefield of Prairie De Ann and reached the home of Lieutenant Whitehouse toward evening. For safe keeping we were confined in the vacant village store. It was a touching incident when Lieutenant Whitehouse dismounted and started up the path to his home. His wife and young daughter ran to meet him; they threw their arms around his neck and showered him with kisses. It was a very affecting scene of the love and affection of a devoted family.

We made an early start the next morning and soon reached Poison Springs, where one of General Steele's wagon trains that had started back to Little Rock for army supplies, with an escort of cavalry and infantry, was attacked by the Confederates. The train guards were defeated with a heavy loss and compelled to surrender.

September 10 we arrived at Camden and were placed in the second story of a warehouse, in which about one hundred and fifty Federal prisoners were confined, and quite a number of them were old acquaintances, recaptured prisoners. The following day all were transferred to a brick cotton shed. It was a low building, about one hundred feet square with a hollow court in the center, where the cooking was done.

The month of September dragged along slowly, but we heard no more of any contemplated exchange of prisoners. Finally, September 30, an order came to transfer all the Federal prisoners, numbering about two hundred, to Shreveport, Louisiana, one hundred and ten miles southwest. We were soon on the way and were guarded by a company of cavalry in command of Captain Montgomery. We traveled through a prosperous section of Arkansas and on October 5 arrived at Shreveport, which was the headquarters of the trans-Mississippi department. We crossed Red River on a pontoon bridge, and marched up Main street to the provost marshal's office. While our names were being taken Captain Birchett, the Confederate assistant agent for the exchange of prisoners, with whom I was well acquainted, recognized me and inquired, Where in the world did you come from? I replied that I had made my escape, but had been recaptured up in Arkansas. He stated: "You missed

it this time sure; your regiment has been exchanged and has just arrived at the Four Mile Springs on their way home."

Three days afterward we were ordered to start for Camp Ford prison, one hundred and ten miles west. We were guarded by the same cavalry that started with us from Camden. Two hours' march brought us to where our regiment was in line at the Four Mile Springs waiting to see us pass. They were not permitted to speak to us as we passed by on the way to our old prison.

After four days' steady marching the prison gates at Camp Ford closed behind us for the second time, and not to reopen again until the end of the war. After seven long months of waiting, the end came May 17, 1865, when the Texas regiment that guarded the prison disbanded and started westward to their homes. We turned to the east and began our homeward journey.

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¹NOTE.—Any shortcomings in the make-up of this index should be charged to me and not to Professor Reynolds, as the latter was abroad when it was made—FARRAR NEWBERRY, Acting Secretary.

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ADDENDA.

In the absence of the editor Mr. Dallas Tabor Herndon, secretary of the History Commission, and Prof. Farrar Newberry of Fayetteville, rendered invaluable assistance in the reading of the proof and in preparing the Index.

We wish to note several errors in Hon. Jesse Turner's article on the Constitution, beginning on page 74 of this volume. They should not be charged to him, as he was not responsible for them.

On page 89, second line of footnote 32, "Kearn" should be "Kean."

On page 135, line 8 from top, the word "averted" should be "adverted."

Seventh line from top of page 139, the word "set" should be "sit."

On page 142 the matter in small type following the word "recorded" and ending at the bottom of page 143 with "patents," should have been a footnote. Also on page 143, third line from top, the words "not levy" should be "nor levy."

On page 160, first line, second paragraph of footnote 118, should be "Gouverneur" instead of "Governor."

On page 166, eighth line from bottom, "stand" should be "stands."

